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United States
Circuit Court of Appeals
For the Ninth Circuit. *2314*

ELSA METZ MASON,

Appellant,

vs.

THOMAS MITCHELL,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL H. O'BRIEN,

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In the District Court of the United States, Southern
District of California, Central Division.

In Bankruptcy No. 39,517-B-H

In the Matter of

ELSA METZ MASON and THOMAS MIT-
CHELL, copartners,

Bankrupt.

PARTNERSHIP PETITION

To the Honorable Judges of the District Court of
the United States for the Southern District of
California, Central Division:

The petition of Elsa Metz Mason, of Los Angeles, in the County of Los Angeles, State of California, respectfully represents:

1. That on or about the 29th day of August, 1940, petitioner entered into a partnership agreement with Thomas Mitchell, for the purpose of the transaction of the business of recovering and selling shark liver oil. The said partnership has never been dissolved and petitioner and said Thomas Mitchell are still such copartners. That petitioner files this petition upon behalf of said partnership.

2. That said partnership and your petitioner and Thomas Mitchell have had their principal place of business and residence at 1007 Hilts St., West Los Angeles, County of Los Angeles, State of California, within the above judicial district, for a longer period of six months immediately preceding

the filing of this petition than in any other judicial district.

3. That said partnership owes debts and is insolvent.

4. Your petitioner is willing, upon behalf of said partnership, to surrender all the property of said partnership and all her individual property for the benefit of the creditors of said partnership, and of her creditors, except such property as is exempt by law, and petitioner desires upon behalf of said partnership to obtain the benefits of the Act of Congress relating to bankruptcy. [2]

5. The schedule hereto annexed, marked "Schedule A", and verified by the oath of your petitioner, contains a full and true statement of all the debts of said partnership, and, so far as it is possible to ascertain, the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of said Act.

6. The schedule hereto annexed, marked "Schedule B", and verified by the oath of your petitioner, contains an accurate inventory of all of the property, real and personal, of said partnership, and such further statements concerning such property as are required by the provisions of said Act.

7. The schedule hereto annexed, marked "Schedule C", and verified by the oath of your petitioner, contains a full and true statement of all her individual debts, and, so far as it is possible to ascertain, the names and places of residence of her cred-

itors, and such further statements concerning said debts as are required by the provisions of said Act.

8. The schedule hereto annexed, marked "Schedule D", and verified by the oath of your petitioner, contains an accurate inventory of all her individual property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore, your petitioner prays that a writ of subpoena be issued to said Thomas Mitchell, and that a hearing be had and said partnership be adjudged by the Court to be bankrupt within the purview of said Act.

ELSA METZ MASON

Petitioner

EARL E. MOSS

Attorney for Petitioner [3]

(Duly Verified.)

[Endorsed]: Filed Oct. 21, 1941. [4]

[Title of District Court and Cause.]

ANSWER OF THOMAS MITCHELL

Comes now Thomas Mitchell, named herein as an alleged partner of Elsa Metz Mason, and as an alleged member of the partnership of Elsa Metz Mason and Thomas Mitchell, and answering the so-called Partnership Petition, denies, admits and alleges as follows, to wit:

I.

This answering defendant, Thomas Mitchell, denies that on or about the 29th day of August, 1940, or at any time or at all, this answering defendant, Thomas Mitchell, entered into any partnership with Elsa Metz Mason, either generally, specifically or at all. This answering defendant, Thomas Mitchell, denies that he entered into any partnership, either for the transaction of a business of recovering and selling shark liver oil or any other purpose or at all. This defendant denies that he ever entered into any partnership in any manner or at all with Elsa Metz Mason. This defendant denies that this partnership, as alleged or at all, has ever existed, and therefore denies that it has never been dissolved, and denies that said partnership exists, has ever existed, or still exists. This defendant, Thomas Mitchell, alleges that he has never been a co-partner at all in any business at all with Elsa Metz Mason, either actual or ostensible. This answering defendant denies that Elsa Metz Mason filed the so-called Partnership Petition on behalf of any partnership, and denies that any partnership exists or ever did exist.

II.

This answering defendant, Thomas Mitchell, denies that he either alone or as a partner, which partnership he denies, ever had a or any place of business or any principal place of business at 1007 Hilts Drive, Beverly Hills or Los Angeles or any other place or at all, and denies that there was any part-

nership or that it had any place of business either in Los Angeles County, California, or at all. This answering defendant denies that this partnership had any place of business within this judicial district for any period or time or at all.

III.

This answering defendant, Thomas Mitchell, denies that this alleged partnership owes any debts and that this alleged partnership is insolvent. This answering defendant, Thomas Mitchell, alleges that he is solvent and has money and property in excess of the amount of the total combined debts of the alleged partnership of Elsa Metz Mason individually and of himself.

IV.

This answering defendant, Thomas Mitchell, denies that the schedules attached to the so-called Partnership Petition set forth any partnership debts or that they contain any true statements concerning the partnership or any partnership debts.

V.

This answering defendant, Thomas Mitchell, denies that [6] the Schedule B attached to the so-called Partnership Petition contains a list of any assets of any partnership of or to which he ever was a party, a partner, actual or ostensible, and denies that said schedule contains an accurate inventory of any property of any partnership, either as alleged or at all.

VI.

Answering Paragraph 7 of the said Partnership Petition, this answering defendant, Thomas Mitchell, has no knowledge other than hereinafter stated concerning the matters and things therein set forth, nor concerning the matters and things set forth in Paragraph 8, to wit: the matters and things relating to the Schedules C and D, purporting to be the schedules of Elsa Metz Mason individually, other than this. This answering defendant, Thomas Mitchell, is now informed and believes that Elsa Metz Mason was heretofore the owner of record of a ship known as "The Mariner." That with respect to the debts scheduled in Schedule A-3 of the so-called partnership schedules, there appears a list of creditors concerning which, this answering defendant is now informed, consist of persons and firms who supplied material to said vessel, "The Mariner", and concerning which the petitioner is now informed by his counsel that some of said creditors have heretofore filed libels and liens against said vessel, "The Mariner". This answering defendant never owned, had any interest in "The Mariner", directly or indirectly, and never had any dealings, directly or indirectly, with Elsa Metz Mason concerning said "Mariner". With respect to the claim asserted by Elsa Metz Mason that she is entitled to contributions in the estimated sum of \$8,000.00 from Thomas Mitchell by way of contributions to partnership disbursements, this answering defendant, Thomas Mitchell, alleges that he knows nothing concerning any partnership, actual or ostensible which has ever

existed between Elsa Metz Mason and Thomas Mitchell, and denies the existence of any such partnership [7] or any partnership at all and denies his liability to contribute to any partnership disbursements, and denies there were any partnership disbursements or partnership debts or partnership liabilities.

Further answering said Partnership Petition, as a separate and second defense thereto, said Thomas Mitchell alleges that heretofore one Fardell borrowed of and from Thomas Mitchell various sums of money, which said Fardell invested in a joint venture with Monty Glenwood Mason. That the relationship of said Fardell and Monty Glenwood Mason was defined by writings, under the terms of which Monty Glenwood Mason furnished to said joint venture the ship "The Mariner". That said joint venture, between said Fardell and Monty Glenwood Mason was one in which the name and personality of Elsa Metz Mason never appeared and was not known. That the relationship of Thomas Mitchell to said joint venture was one of a stranger, and that the relationship between Fardell and Thomas Mitchell was one of debtor and creditor only. That Thomas Mitchell has never entered into any relationship with Elsa Metz Mason with respect to any partnership, any joint venture, or otherwise, with respect to the business of recovering and selling shark liver oil, or with respect to the operation of the ship, "The Mariner", and Thomas Mitchell alleges that the filing of the Partnership Petition herein by Elsa Metz Mason is in bad faith and

without any foundation in fact or in law, and is an improper, illegal attempt to compel Thomas Mitchell, a stranger, to answer for the debts of Elsa Metz Mason. The said Thomas Mitchell being not liable for any of said debts, either legally or morally, and being an entire stranger to the affairs and business of both Elsa Metz Mason and that of her husband, Monty Glenwood Mason.

Wherefore, this answering defendant, Thomas Mitchell, prays that this proceeding be dismissed in as far as it concerns or relates to the establishment of any partnership as between this [8] answering defendant, Thomas Mitchell, and Elsa Metz Mason, or the recognition of any such partnership, directly or indirectly, and prays that this petition be dismissed absolutely as to this answering defendant, Thomas Mitchell; for the costs of this answering defendant, as may be herein incurred and taxed; and for all further relief, both in law and equity, as may be necessary for proper disposition and determination of the controversy sought to be liquidated herein by the filing of the said alleged Partnership Petition.

THOMAS MITCHELL

Thomas Mitchell, the Answer-
ing Defendant

RUPERT B. TURNBULL

KENNETH A. WHITE

Attorneys for Thomas Mitchell

(Duly Verified.)

[Endorsed]: Filed Oct. 31, 1941. [9]

[Title of District Court and Cause.]

ORDER DISMISSING PROCEEDINGS

Elsa Metz Mason filed herein the within proceedings under the provisions of Section 5 of the Bankruptcy Act. She alleges that she entered into a copartnership agreement with Thomas Mitchell; that the said partnership owes debts and is insolvent. The prayer of the said petition filed by her reciting, "Wherefore your petitioner prays that a writ of subpoena be issued to said Thomas Mitchell, and that a hearing be had and said partnership be adjudged by the Court to be a bankrupt within the purview of said Act."

Thomas Mitchell filed an Answer in which he denied the existence of the said partnership; denied that he was a copartner; denied that the alleged copartnership was insolvent and further alleged that he was solvent and had money and property in excess of the amount of the total combined debts of the alleged partnership. The prayer of his Answer sets forth "Wherefore, this answering defendant, Thomas Mitchell, prays that this proceeding be dismissed in as far as it concerns or relates to the establishment of any partnership as between this answering defendant, Thomas Mitchell, and Elsa Metz Mason, or the recognition of any such partnership, directly or indirectly, and prays that this petition be dismissed absolutely as to this answering defendant, Thomas Mitchell; for the costs of this answering defendant, as may be herein incurred and taxed;

and for all further relief, both in law and equity, as may be necessary for proper disposition and [11] determination of the controversy sought to be liquidated herein by the filing of the said alleged Partnership Petition." The following order of reference was made by Judge Ben Harrison, "On the Court's own motion, it is ordered that this matter be and it is hereby referred to Referee Hubert F. Laugharn for hearing on the issues herein and for all further proceedings."

The matter was thereupon set for trial before the undersigned Referee on April 2nd, 1942 at the hour of 10:00 A.M.

The said Elsa Metz Mason was represented by Earl E. Moss and Francis B. Cobb, and Thomas Mitchell was represented by Kenneth A. White and Rupert B. Turnbull.

Counsel for the respective parties stipulated that Thomas Mitchell, who is a well known and prominent motion picture actor, was solvent and had sufficient net assets and funds to pay in full all of the obligations of the said alleged partnership.

The issue was, therefore, directly presented as to the legal requirement of pleading and proof with respect to the Insolvency of the partnership, and, although the respective parties indicated that a trial of the issues presented by the said pleadings would take at least four days' Court time, the real issue which may be determinative of the entire case was then framed upon and about the simple propo-

sition, "when is a partnership (under Section 5 of the Bankruptcy Act) insolvent?"

Upon this sole point the matter was presented to the Referee for determination.

Extensive briefs have been filed herein by the respective parties.

The within proceeding was filed under the provisions of Section 5b of the Bankruptcy Act which provides, "A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: Provided, [12] however, That where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent * * *"

The Act of 1898, with respect to bankruptcies of partnerships, was ambiguous and led to considerable confusion. The Supreme Court promulgated General Order VIII which order provided that "Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the same partnership, * * * and he shall have the right to appear. * * * and to make proof, * * * that the partnership is not insolvent or has not committed an act of bankruptcy, etc."

However, the Supreme Court in 1925, in the case of *Meek v. Centre County Banking Company*, 6 Am. B. R. (NS) 1, 268 U. S. 426 abrogated this

general order (which incidentally it had promulgated), holding in effect that the said general order was substantive law and not within the contemplation of the authority delegated to the Supreme Court to make administrative and procedural general orders.

Section 5 was one of the Sections which was not only amended but extensively supplemented by the Chandler Act of 1938. Although we are concerned here only with the subdivision (b) which sets up the machinery permitting a general partner to file a petition upon behalf of the partnership, which petition as to any nonjoining or nonconsenting general partner was "involuntary" not as to an act of bankruptcy as contemplated by Section 3 of the Act but only as to the issue of the insolvency of the partnership. The requirement of the statute is that the "petition shall allege that the partnership is insolvent."

It is the interpretation of this phrase which concerns us here.

Cases will be referred to hereinafter which will define [13] when and under what circumstances a partnership is insolvent under the Act as it existed prior to the change effected by the Chandler Act.

Section 67a "Liens and Fraudulent Transfers" was recast by the Chandler Act, Section (d)(1)(d) thereof was added, providing "a person is 'insolvent' when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether a partnership is

insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts, and also the amount realizable on any unpaid subscription to the partnership of each limited partner; * * *"

The Chandler Act expanded the old Section on fraudulent conveyances and in fact set up the same to include the salient provisions of the Uniform Fraudulent Conveyance Act adopted by the principal commercial states. In California the Uniform Fraudulent Conveyance Act was adopted in 1939 and Section 3439.02 of the Civil Code provides: "(b) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such *li* limited partner is probably sufficient to pay his debts, including such unpaid subscription."

It will be noted that the said Section 67d of the Bankruptcy Act provides "For the purposes of, and exclusively applicable to, this subdivision" etc. We will not then use this particular section to determine the present issue, but the question then presents itself: Do we have a different measure or defi-

nation [14] of when a copartnership is insolvent under Section 5 than under Section 67?

The Bankruptcy Act of 1898 made several changes over the prior Bankruptcy Acts of 1841 and 1867 with respect to bankruptcies of partnership. It provided that the partnership could be adjudicated a bankrupt distinct from its members. In other words it set up the partnership as a separate entity and thereupon there developed the so-called 'entity theory' with respect to partnerships.

There has never, however, been a true entity with respect to all phases of a partnership. An order of adjudication could be made against a partnership alone without regard to the individual bankruptcy of the individual members thereof. The discharge in such a proceeding did not discharge the obligation of the individual partners thereof. The partnership could not be put into involuntary bankruptcy under Section 3 by creditors (where insolvency was a requisite to the Act of Bankruptcy) unless the partners were likewise insolvent or, in other words, unless the net assets of the partners added to the assets of the partnership were less than the liabilities of the partnership.

In further contravention to the entity theory was the right and power to bring into the administration of a partnership bankruptcy the estates of the individual partners who were not in individual bankruptcy under the so called marshaling of assets theory whereby assets could be taken from the said partners to pay any deficiency after the assets of the

partnership had been shown to be insufficient to pay its liabilities. But there has never been a true entity theory as applied to partnership bankruptcy, and although the partnership may be adjudicated a bankrupt, its peculiar character is still retained because of the fact that the liability of the partners is either joint or several or both in accordance with the statutes of the respective States. The [15] obligation of the partners for the partnership obligation is not as guarantor or surety, but it is original and primary. For instance under those provisions with respect to the avoidance of liens or the setting aside of transfers or encumbrances (Section 67) it is not possible to put these provisions of the law into operation even though there is not one cent in the estate of the partnership with which to pay creditors if a single partner has sufficient net assets to pay the claims of the partnership creditors.

Why then should it be possible for one general partner to force the partnership into bankruptcy against the will or without the approval of a non-consenting general partner who maintains that he has sufficient net assets to pay all of the debts of the partnership, and who therefore maintains that the partnership is not insolvent?

The best possible answer to this question, and one which we must admit has considerable logic, is that when the partnership itself is insolvent several different courses of action may be taken by a general partner to apply the partnership assets to the partnership obligations, to-wit: (1) voluntary and mu-

tual agreement between the partners to liquidate the assets to pay bills, (2) agreed liquidation or mutual appointment of trustee to liquidate (3) state court action to dissolve, etc. Therefore why should not the general partner be permitted to force the liquidation in the bankruptcy court since it is recognized as the paramount court for the adjustment of creditors' rights? The nonconsenting partner could defeat the proceeding by paying off the said obligations of the partnership or could allow the adjudication knowing that his assets could be brought into the administration to pay the deficit of the partnership bills. For after all, he was already, and before any bankruptcy fastened with the same liability upon behalf of all of the partnership bills i.e. he was liable therefor.

[16]

Thus we see the logic of both sides of the question here so ably presented by respective counsel, Mr. Moss for Elsa Metz Mason and Mr. Turnbull for Thomas Mitchell, both of whom have spent many years in the service of this Court as Referees in Bankruptcy and who are not only the heads of their profession but learned students of bankruptcy law.

While the Chandler Act has extensively supplemented and rewritten that portion of the Bankruptcy Act dealing with partnership bankruptcies, I do not find any basic change effecting the question herein presented, i.e. "when is a partnership insolvent under the provisions of Section 5b?"

The legislators did not define the phrase "the partnership is insolvent", as here used, although the

definition under Section 67d was bodily and wholly placed in the Bankruptcy Act from the Uniform Fraudulent Conveyance Act. The answer must be that it was deemed to be a settled subject by case law interpretation existing at that time.

Let us then look into the subject from the standpoint of Court decisions thereon. The following cases of the respective circuit courts have held, either directly or by dicta in passing upon partnership bankruptcies, that the partnership while a separate entity subject to adjudication as such is not deemed insolvent unless the partners thereof are also insolvent or, in other words, if there is any solvent partner who has net assets, after paying his individual liabilities, sufficient to pay the partnership liabilities then the partnership is not insolvent.

First Circuit:

Houghton Wool Company v. Morris, et al 41
Am. B.R. 271, 249 Fed. 434

Gallagher, et al v. Hannigan, etc. 6 Am. B.R.
(NS) 224, 5 Fed. (2d) 171

Baker, et al v. Bates-Street Shirt Co., et al
6 Am. B.R. (NS) 547, 6 Fed. (2d) 854 [17]

Second Circuit:

In Re Samuels & Lesser, et al 32 Am. B.R. 436,
215 Fed. 845

Third Circuit:

In Re Meek v. Beezer, et al 12 Am. B.R. (NS)
433, 28 Fed. (2d) 343

Fifth Circuit:

Washington Cotton Co. v. Morgan & Williams
27 Am. B.R. 638, 172 Fed. 310

Sixth Circuit:

Vaccaro v. Security Bank of Memphis 4 Am.
B.R. 474, 103 Fed. 463
Titus v. Maxwell 49 Am. B.R. 156, 281 Fed. 317

Ninth Circuit:

Yungbluth v. Slipper, et al 26 Am. B.R. 265

There are, of course, many District Court cases following this theory, but no attempt will be made to cite the same here.

Our own District Court, in the Matter of Hansley & Adams, 36 Am. B. R. 1, was presented with the following situation, to-wit:

“Hansley and Adams were partners. Adams, one of the partners, filed a petition to have the partnership and himself declared bankrupts, alleging that Hansley was insolvent. The prayer of the petition was that the partnership and the members thereof, be declared bankrupts. Hansley opposed the proceedings.” Upon the findings of a special master, an order was made in the matter that the partnership be adjudicated a bankrupt.

“Hansley thereupon moved the court to vacate the adjudication, making the contention that the partnership could not be adjudicated without, at the same time, adjudging the indi-

vidual members of the partnership, bankrupts”
[18]

Judge Trippet held that the partnership could be declared a separate bankrupt, that it was an entity to that extent and that the statute did not impose the condition that the partners be declared bankrupts at the same time. Stating and quoting from the opinion:

“It is well settled that one partner may petition to have the partnership declared a voluntary bankrupt. It is undoubtedly necessary, except in certain cases, that the Court should determine that the members of the partnership are insolvent, otherwise the partnership would not be bankrupt. * * * The opinion *In re Bertenshaw* to the effect that the trustee elected by the partnership creditors cannot administer the estates of the members, has been disapproved by the Supreme Court, and Section 5 clearly contemplates this procedure. General Order No. VIII, provides for this course.

“Before arriving at the foregoing conclusions, I examined the following authorities: *Francis v. McNeal*, 228 U. S. 695, 30 Am. B. R. 244, 33 Sup. Ct. 701, 57 L. Ed. 1029; *Still’s Sons v. American National Bank* (C.C.A., 4th Cir.), 31 Am. B.R. 320, 209 Fed. 749; *In re Samuels* (C.C.A., 2d Cir.), 32 Am. B. R. 436, 215 Fed. 845, 132 C. C. A. 187; *In re Forbes* (D.C.Mass.) 11 Am. B. R. 787, 128 Fed. 137; *Vaccaro v. Security Bank of Memphis* (C. C.

A., 6th Cir.), 4 Am. B. R. 474, 103 Fed. 436, 43 C. C. A. 279; *In re Bertenshaw* (C. C. A., 8th Cir.), 19 Am. B.R. 577, 157 Fed. 363, 85 C. C. A. 61; *In re Meyer* (C.C.A., 2d Cir.), 3 Am. B.R. 559, 98 Fed. 979, 39 C. C. A. 368, and many others." [19]

Of course in 1925 General Order VIII was abrogated and there was no way for a partnership to be placed in voluntary bankruptcy by the copartners without the consent of the members, and, if any general partner objected, there could be no adjudication, until the passage of the Chandler Act in 1938, but the expression of Judge Trippet that "unless the Court should determine that the members of the partnership are insolvent the partnership would not be bankrupt" still remains the law.

Francis v. McNeal, 228 U. S. 695, 30 Am. B.R. 244, determined by the Supreme Court in 1913, holds in effect that where a partner is adjudicated a bankrupt the separate estates of the partners can be administered by the copartnership trustee. The opinion of Justice Holmes states in part:

"But the fact remains as true as ever that partnership debts are debts of the member of the firm, and that the individual liabilities of the members is not collateral like that of a surety, but primary and direct, whatever priorities there may be in the marshaling of assets. The nature of the liability is determined by the common law, not by the possible intervention

of the Bankruptcy Act. Therefore ordinarily it would be impossible that a firm should be insolvent while the members of it remained able to pay its debts with money available for that end. A judgment could be got and the partnership debt satisfied on execution out of the individual estates. * * * So far as *Vaccaro v. Security Bank* is inconsistent with the opinion of the majority in *Re Bertenshaw*, we regard it as sustained by the stronger reasons and as correct."

[20]

The text writers and other cases referred to the portion of the opinion above recited as dicta. It is true that the particular point, (the necessity of insolvency to secure an adjudication of partnership) was not in issue because the order appealed from was an order marshaling the assets in a case of a copartnership already adjudicated, but if it is merely dicta, certainly we could have no clearer or concise answer to the question, "When is a copartnership insolvent?"

The principal case supporting the strict entity doctrine is *In Re Bertenshaw* (C. C. A. 8th Circuit) 19 Am. B. R. 577, 157 Fed. 363. This case was in turn followed by the case of *Matter of Everybody's Grocery & Meat Market*, 21 Am. B. R. 925, determined by the District Court of Oklahoma the following year. Since the said district is in the Eighth Circuit, it obviously was closely following the ruling of its superior court.

The District Court for the Eastern District of New York, in 1908, determined, in the case of Solomon & Carvel, 20 Am. B. R. 488, 163 Fed. 140, that the Bertenshaw case should be followed, but the same district court later in the matter of Max Kobre and Ginsberg, 35 Am. B. R. 389, abandoned the Bertenshaw case with the statement that the case had been disposed of by the cases of Francis v. McNeal, Vaccaro v. Security Bank of Memphis and In Re Samuels & Lesser, which latter case is in 32 Am. B. R. 436, 215 Fed. 845, and is of the 2nd Circuit, of which the said Court was a member.

While there has been a conflict between the views of the various courts on the question here presented, the law is deemed settled and fixed by the various writers of text books and service books on the subject of bankruptcy. To show their view on the particular point here in controversy, there is quoted hereinafter portions of their views on the subject, to-wit: [21]

Remington on Bankruptcy, Volume 4,
Page 693, Section 1746

“A partnership is not *be* be deemed insolvent unless the aggregate of all its own property, together with all of the individual property of its members in excess of their respective individual indebtedness, is less than its liabilities.”

Collier on Bankruptcy, 14th Edition,
Volume 1—Page 698

“It is to be remembered that notwithstanding the entity doctrine, each partner is indi-

vidually liable for the debts of the firm. It seems logical, therefore, in determining insolvency of a partnership, that not only must the firm assets be insufficient to pay its debts, but also that the assets of the individual members, after payment of their individual debts, be insufficient to make up the deficiency on the firm debts. * * * The Supreme Court by dictum approved this view (Cite *Francis v. McNeal*), although it has never passed upon the point expressly, it represents the weight of authority, (Cite *In re Bertenshaw*, *Matter of Solomon & Carvel*, and *Matter of Everybody's Grocery & Meat Market*, hereinabove referred to).

“It is noted that Section 5b of the Act of 1938, permitting a petition on behalf of the firm by less than all of the general partners, requires an allegation in the petition that the ‘partnership is insolvent’. It is arguable [22] that the purpose of Section 5b is to afford relief to a solvent member of a failing firm, and that it should therefore be sufficient to show that the firm assets are exceeded by the firm liabilities. However, the section does not define the meaning of the requirement that the ‘partnership is insolvent’. In view of the majority rule that a firm is not insolvent when any member is solvent, it seems probable that a member petitioning under Section 5b must show that the firm and all the partners are insolvent.”

Bradenberg on Bankruptcy, Section 41

“But the better rule, supported by a recent decision of the Supreme Court, is that the insolvency of the members of the firm as individuals is essential to the insolvency of the partnership, and that all the property which may be made liable for the firm debts must be considered in determining whether or not the copartnership is solvent. Partners are liable in solido, and in order that a firm may be adjudged a bankrupt, it must be shown not only that the copartnership is insolvent, but that every one of its members is individually insolvent.”

Browne on Bankruptcy, Chapter II, Section 7

“The better view and the true rule appears to be that in partnership bankruptcy, jurisdiction is conditional, i. e., subject [23] to the condition that both the partnership, as such, and all the individual partners, are insolvent.”

Section 5 as rewritten in the Chandler Act is referred to as the Weinstein draft, since Jacob I. Weinstein, prominent bankruptcy lawyer of Philadelphia, was instrumental in presenting this phase of the legislation to Congress. He is considered the “Dean of Bankruptcy Practitioners” in the United States, and his personal opinion on the point involved is set forth in the following words: “I was then familiar with the conflict in the decisions. However, I considered that the weight of authority reflected the dictum of *Francis v. McNeal*, 228 U.S.

695, 30 Am. B.R. 244, which clearly indicates that a partnership is not insolvent if, including the liability for partnership debts, any partner is solvent. While the reasoning of the Bertenshaw case is, perhaps, legalistically logical, the result is not realistic and I believe that the trend has clearly been the other way. Furthermore, it also seems to me that the marshaling of assets, required and contemplated by the provision of Section 5, which draws into the bankruptcy proceeding the administration of the individual estates of non-adjudicated partners, makes necessary and gives support to the prevailing rule.’’

The parties herein, having stipulated that Thomas Mitchell, the Alleged Partner, was solvent and had sufficient net funds to pay in full all of the obligations of the said alleged partnership, I must therefore determine that the petition filed herein by Elsa Metz Mason, under the provisions of Section 5 of the Bankruptcy Act to cause an order of adjudication of the said alleged partnership, should be dismissed.

It is, therefore, not necessary to determine whether or not the said Thomas Mitchell was a partner of the said alleged partnership or whether in fact any said partnership ever existed. [24]

Elsa Metz Mason has sought to use the forum of the bankruptcy court to determine the said question here presented. She heretofore filed with the Court her proceeding under Chapter XI of the Bankruptcy Act in which proceeding she sought to affect

a plan of arrangement with her creditors. This was her individual proceeding, and her proposed plan was predicated upon the realization on the possible equity in a sailing Yacht known as the "Mariner". The boat was sold in the proceedings with no net funds received for her creditors after payment of encumbrances and liens thereon. Thereafter this Referee dismissed the said proceeding when it appeared that nothing could be realized therefrom for the creditors.

In her said Chapter XI proceeding she indicated that Thomas Mitchell was interested in her business venture, to-wit: the operation of the "Mariner" in tropical waters in a shark fishing venture. It was never contended that the alleged partnership had any assets other than the said "Mariner".

This proceeding, thereupon brought by the said Elsa Metz Mason, brings no assets into court for the creditors either of the alleged partnership or of her own, in fact her position, after her former Chapter XI Arrangement Proceeding, was that neither she nor the alleged partnership has any assets. In effect this proceeding is for the benefit of her creditors who she now claims are partnership creditors, and the only way the proceeding could be of benefit to the said creditors, whether they are her individual creditors or partnership creditors would be to have this court declare that Thomas Mitchell was a partner and that the partnership should be adjudicated a bankrupt even though the said Thomas Mitchell admittedly had sufficient assets to pay in full the partnership creditors.

It clearly appears that this procedure should not be permitted. Under Section 67 the Bankruptcy Court would not per- [25] mit the filing of an action by the Trustee of a partnership bankrupt estate to recover property or set aside liens or transfers if a general partner had sufficient assets to pay the obligations of the partnership. We should arrive at the same general result here, therefore, the within proceedings are ordered dismissed.

Dated this 8 day of May, 1942.

HUBERT F. LAUGHARN,
Referee.

[Endorsed]: Filed May 8, 1942. Hubert F. Laugharn, Referee; M. E. Marsh, Clerk.

[Endorsed]: Filed May 25, 1942. [26]

[Title of District Court and Cause.]

PETITION FOR REVIEW

Comes now Elsa Metz Mason, the petitioner in the above matter, and petitions for a review of the order of the above entitled court dated May 8, 1942, a copy of which order is hereto attached, marked "Exhibit A", and made a part hereof, on the following grounds, which are the errors contained in said order:

1. That said order is against law.
2. That the findings of fact contained in said

order do not justify the drawing of the legal conclusions *said* forth in *set* order.

3. That the allegations contained in the petition in bankruptcy filed on behalf of the above described partnership are sufficient, and that it is not necessary, under the Bankruptcy Act, to include assets of the individual partners with those of the partnership in the allegations of the petition in bankruptcy or the proof in support thereof.

Wherefore, petitioner prays that said order be reviewed by the Judge and that the same be reversed.

Dated: May 18, 1942.

EARL E. MOSS and

FRANCIS B. COBB,

Attorneys for Petitioner,

By EARL E. MOSS.

[Endorsed]: Filed May 21, 1942. Hubert F. Laugharn, Referee; M. E. Marsh, Clerk.

[Endorsed]: Filed May 25, 1942. [27]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

To the Hon. Ben Harrison, Judge of the District Court of the United States, Southern District of California, Central Division:

I, Hubert F. Laugharn, Referee in Bankruptcy, to whom the above entitled matter has been referred, do hereby certify as follows:

A Partnership Petition for voluntary bankruptcy was filed by Elsa Metz Mason, Petitioner, in the above entitled matter, on the 21st day of October, 1941.

Thereafter, on the 31st day of October, 1941, an Answer was filed by Thomas Mitchell, the said answer praying for a dismissal of the petition. The said answer denied the existence of the alleged copartnership and likewise denied the partnership was insolvent, and further alleged that the said Thomas Mitchell was solvent and had money and property in excess of the amount of the total combined debts of the said alleged partnership of Elsa Metz Mason individually and of himself.

Thereafter, on the 9th day of February, 1942, the Judge on his own motion ordered that this matter be referred to the undersigned Referee "for hearing on the issues herein and for all further proceedings".

A hearing on said matter was had before the undersigned Referee on April 2, 1942 at 10:00 A. M., and the matter was taken under submission by the

Referee, the parties thereafter filing [28] extensive briefs in support of their respective positions.

On May 8, 1942, the Referee made his order dismissing the proceedings, and on May 21, 1942, a Petition for Review of said Order Dismissing Proceedings was filed on behalf of the petitioner Elsa Metz Mason.

The Order Dismissing the Proceedings states in detail the question presented and the reasons for the making of the said order, and since the same is forwarded to the Court herewith, it is not deemed necessary to make any further comments or observations in this Certificate pertaining to the contents of the said Order.

Attached to this Certificate are the following documents:

1. Order of Reference.
2. Memorandum of Points and Authorities. (Petitioner's).
3. Brief of the Defendant Thomas Mitchell.
4. Petitioner's Concluding Brief.
5. Order Dismissing Proceedings.
6. Petition for Order Extending Time for Review.
7. Order Extending Time for Review.
8. Petition for Review.

Dated: May 25, 1942.

Respectfully submitted,

HUBERT F. LAUGHARN,

Referee in Bankruptcy.

[Endorsed]: Filed May 25, 1942. [29]

In the District Court of the United States, Southern
District of California, Central Division

No. 39,517-BH

In the Matter of

ELSA METZ MASON and
THOMAS MITCHELL, Copartners,
Alleged Bankrupt,

MEMORANDUM OPINION

It is my conclusion that the provisions of Sub. b of Sec. 5 of the Bankruptcy Act, Title 11, Sec. 23 (b) USCA as added by the Chandler Act reading as follows:

“Provided, however, that where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent.”

does not change the established law “that a partnership is not bankrupt so long as any members who compose it is individually solvent.” (In re Samuels, 215 Fed. 845). Under the allegation required by said Sub. b of Section 5, before an adjudication would be authorized it would be incumbent upon the petitioners to prove that all the members of said partnership are insolvent.

To me the word “partnership” as used in said section includes its membership.

The Referee has ably covered the subject matter of this review and as I am in complete accord with

his conclusions, the order of the Referee is hereby affirmed.

Dated: Los Angeles, California, June 29, 1942.

BEN HARRISON,
Judge.

[Endorsed]: Filed Jun. 29, 1942. [30]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 29th day of June in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable Ben Harrison, District Judge.

No. 39517-BH-Bkey.

[Title of Cause.]

This matter having been heretofore heard by the Court pursuant to stipulation for time of hearing filed June 4, 1942, upon petition for review of referee's order dated May 8, 1942, dismissing this proceeding, and submitted, and the Court having duly considered the record and the briefs of counsel and the law applicable, and being fully advised in the premises, now hands down and orders filed its Memorandum Opinion, and in accordance therewith orders the said Order of the Referee on review is affirmed. [30A]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Thomas Mitchell and to Rupert B. Turnbull,
Esq., and Kenneth White, Esq., his attorneys:

You and each of you will please take notice that the Elsa Metz Mason, one of the alleged bankrupt copartners in the above matter, is appealing from an order of the above-entitled Court made and entered in the minutes of said Court on June 29, 1942, whereby the order of the Referee in Bankruptcy dismissing the above-entitled proceeding was affirmed, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: August 4, 1942.

EARL E. MOSS,

Attorney for Elsa Metz Mason

[Endorsed]: Filed & mld. copy to R. B. Turnbull
& Kenneth White, Aug. 5, 1942. [31]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Comes now Elsa Metz Mason, one of the alleged bankrupts in the above-entitled proceeding and appellant therein, and hereby submits a concise statement of points on which she intends to rely on the appeal of the above-entitled proceeding as follows:

1. That the above-entitled District Court erred in affirming an order of the Referee in Bankruptcy dated May 8, 1942, dismissing all proceedings in said cause.

2. A partnership petition in bankruptcy which alleges insolvency of the partnership is sufficient without a further allegation that each of the partners is also insolvent.

3. A partnership is insolvent and may file its petition in bankruptcy whenever the aggregate of its property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, binder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts; there is no requirement that all of the individual partners must also be insolvent.

4. Even though a partner who refuses to join in a partnership petition in bankruptcy alleges in his answer and proves that he has sufficient individual property and money to pay all of the debts of the partnership, such allegation and proof does not

justify a dismissal of the petition, if the partnership is [32] otherwise insolvent.

Dated: August 5, 1942.

EARL E. MOSS,

Attorney for Appellant.

[Endorsed]: Filed Aug. 8, 1942. [33]

[Title of District Court and Cause.]

STIPULATION REGARDING RECORD ON
APPEAL

It Is Hereby Stipulated and Agreed by and between Elsa Metz Mason and Thomas Mitchell, alleged copartners and alleged bankrupts in the above-entitled matter, through their respective attorneys, that on or about April 2, 1942, at 10:00 A. M. in the trial of said cause in the above-entitled Court before Hubert F. Laugharn, Referee in Bankruptcy, it was stipulated by and between said parties, through their respective attorneys as follows:

That said Thomas Mitchell, at the time when the petition in bankruptcy herein was filed and at all times mentioned therein, had sufficient assets other than those exempt from execution, to pay all of his personal debts, all of the debts of said Elsa Metz Mason and all of the debts of said alleged copartnership.

It Is Further Stipulated and Agreed that said facts and this stipulation shall be included as part

of the contents of the record on the appeal commenced on or about August 4, 1942, in the above-entitled cause.

Dated: August 26, 1942.

EARL E. MOSS,

Attorney for said Elsa Metz
Mason.

RUPERT B. TURNBULL,

Attorney for said Thomas
Mitchell.

It is so ordered.

C. E. BEAUMONT,
Judge.

[Endorsed]: Filed Aug. 28, 1942. [34]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

Elsa Metz Mason, appellant and alleged bankrupt, hereby designates the portions of the record, proceedings and pleadings in the above-entitled cause to be contained in the record on appeal as follows:

1. Partnership petition in bankruptcy filed October 21, 1941.
2. Answer of Thomas Mitchell filed October 31, 1941.
3. Order of Referee in Bankruptcy dated May 8, 1942, dismissing all proceedings in said cause.

4. Petition for review dated May 18, 1942.
5. Referee's certificate on review dated May 24, 1942.
6. Order of above-entitled District Court affirming opinion of Referee dated June 29, 1942.
7. Notice of appeal and record of service thereof.
8. Statement of points on which appellant intends to rely.
9. Designation of contents of record on appeal.
10. Clerk's certification of said record.

Dated: August 5, 1942.

EARL E. MOSS,

Attorney for Appellant. [35]

Copies mailed to Rupert Turnbull and Kenneth White, attys. for respondent, Aug. 7, 1942.

[Endorsed]: Filed Aug. 8, 1942. [36]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36 inclusive contain full, true and correct copies of Partnership Petition; Answer of Thomas Mitchell; Minute Order entered February 9, 1942; Order Dismissing Proceedings; Petition for Review; Referee's Certificate on Re-

view; Memorandum Opinion and Order of Court thereon entered June 29, 1942; Notice of Appeal; Statement of Points on which Appellant Intends to Rely; Stipulation Regarding Record on Appeal and Designation of Contents of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$7.20, which amount has been paid to me by the Appellant.

Witness my hand and the seal of the said District Court this 11th day of September, 1942.

EDMUND L. SMITH,
Clerk.

[Seal] By THEODORE HOCKE,
Deputy Clerk.

[Endorsed]: No. 10249. United States Circuit Court of Appeals for the Ninth Circuit. Elsa Metz Mason, Appellant, vs. Thomas Mitchell, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 12, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 10249

In the Matter of

ELSA METZ MASON and
THOMAS MITCHELL, Copartners,
Alleged Bankrupt.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY AND DES-
IGNATION OF PARTS OF RECORD SUB-
MITTED FOR CONSIDERATION ON
APPEAL

Elsa Metz Mason, as appellant and one of the alleged bankrupts in the above-entitled matter, hereby incorporates by reference herein her Statement of Points on which Appellant Intends to Rely which was filed in the District Court of the United States, Southern District of California, Central Division, and which is part of the record on appeal of said trial court in said proceeding.

Further, said Elsa Metz Mason hereby designates the parts of the record on appeal in said proceeding which she thinks are necessary for the consideration thereof as follows:

1. Partnership petition in bankruptcy filed October 21, 1941.
2. Answer of Thomas Mitchell filed October 31, 1941.

3. Order of Referee in Bankruptcy dated May 8, 1942, dismissing all proceedings in said cause.

4. Petition for review dated May 18, 1942.

5. Referee's certificate on review dated May 24, 1942.

6. Order of above-entitled District Court affirming opinion of Referee dated June 29, 1942.

7. Notice of appeal and record of service thereof.

8. Statement of points on which appellant intends to rely.

9. Designation of contents of record on appeal.

10. This statement of points on which appellant intends to rely and designation of parts of record submitted for consideration on appeal.

11. Stipulation regarding Record on Appeal dated August 26, 1942.

12. Clerk's certification of said record.

Dated: September 4, 1942.

EARL E. MOSS,

Attorney for said Elsa Metz
Mason, appellant and al-
leged bankrupt.

Copy mailed Rupert B. Turnbull, Attorney for
Respondent, Thomas Mitchell, September 3, 1942.

[Endorsed]: Filed Sept. 12, 1942.

No. 10249.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ELSA METZ MASON,

Appellant,

vs.

THOMAS MITCHELL,

Appellee.

APPELLANT'S OPENING BRIEF.

EARL E. MOSS,

750 Subway Terminal Building, Los Angeles,

Attorney for Appellant.

FILED

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No. 10249.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ELSA METZ MASON,

Appellant,

vs.

THOMAS MITCHELL,

Appellee.

APPELLANT'S OPENING BRIEF.

Facts and Authorities Regarding Jurisdiction.

Appellant, Elsa Metz Mason, for and on behalf of herself and Thomas Mitchell, as co-partners, filed a partnership petition in bankruptcy [R. 2-4] on October 21, 1941, in the District Court of the United States for the Southern District of California, Central Division. The said Court had jurisdiction of said proceedings by virtue of the provisions of subdivision (1) of section 2a, and subdivisions (a), (b) and (d) of section 5 of the Bankruptcy Act.

A final order affirming an order of the Referee in Bankruptcy which dismissed said partnership petition was entered for respondent on June 29, 1942 [R. 32-33]. Notice of appeal was filed by appellant on August 5, 1942, and a copy thereof was served on the attorneys for respondent on August 5, 1942 [R. 34]. Appellant then

served and filed his statement of points on which he intends to rely and designation of parts of the record for consideration on appeal on August 8, 1942 [R. 35-36]. The record was certified on September 11, 1942, and filed in this Circuit Court on September 12, 1942 [R. 38-39].

Appellant relies upon the provisions of subdivisions (a) and (b) of section 24 and section 25a of the Bankruptcy Act to sustain the jurisdiction of this Circuit Court to review said order on appeal. The provisions of section 25a of the Bankruptcy Act sustain the jurisdiction of this Circuit Court in so far as the time within which to appeal from said judgment is concerned. The proceedings mentioned in the preceding paragraph were completed pursuant to Federal Rules of Civil Procedure, Rule 73 (a), (b), (c) and (g), and Rule 75.

Statement of the Case and Question Involved.

As hereinbefore indicated, the partnership petition in bankruptcy filed by appellant, Elsa Metz Mason, alleged only the insolvency of the partnership, but was silent on the subject of the solvency or insolvency of the individual partners [R. 2-4]. Respondent, Thomas Mitchell, filed an answer [R. 4-9] to the partnership petition in which he denied his membership in the partnership, alleged that his assets were in excess of the total combined debts of the alleged partnership, of appellant individually and of himself, and further denied that the partnership was insolvent. Respondent prayed that the petition be dismissed as to him.

At the trial of the cause it was stipulated that when said petition was filed, and at all times mentioned therein, respondent had sufficient assets other than those exempt from execution, to pay all of his personal debts, all of

the debts of appellant and all of the debts of said alleged partnership. This stipulation, without the further introduction of evidence, was the ground upon which the Referee made his order dismissing the petition of appellant. As stated in the order of the Referee [R. 11-12]:

“The issue was, therefore, directly presented as to the legal requirement of pleading and proof with respect to the Insolvency of the partnership, and, although the respective parties indicated that a trial of the issues presented by the said pleadings would take at least four days’ Court time, the real issue which may be determinative of the entire case was then framed upon and about the simple proposition, ‘when is a partnership (under Section 5 of the Bankruptcy Act) insolvent?’

Upon this sole point the matter was presented to the Referee for determination.”

A more factual statement of the issue may be set forth as follows: In a proceeding to adjudicate a partnership bankrupt is it necessary to allege or prove any facts concerning the assets of the individual partners? Or, in other words, is it material to determine, in the adjudication of the bankruptcy of a partnership, whether the partners, or any of them, have sufficient assets apart from their interest in the partnership to satisfy the obligations of such partnership?

It is the position of the appellant that a partnership is an entity distinct and separate from its member partners in so far as its adjudication in bankruptcy under section 5a of the Bankruptcy Act is concerned, and that the amount of assets of any individual partner, apart from his interest in the partnership, is entirely immaterial in the determination of the bankruptcy of such partnership.

ARGUMENT.

I.

A Partnership Petition in Bankruptcy, Otherwise Adequate, Is Sufficient to Entitle the Petitioner to an Adjudication Even Though It Contains No Allegation Concerning the Financial Condition of the Individual Partners, and Even Though the Proof Shows That One of the Partners Has Sufficient Funds to Pay All of His Personal Debts Plus Those of the Partnership.

Subdivisions (a) and (b) of section 5 of the Bankruptcy Act are as follows:

“(a) A partnership, including a limited partnership containing one or more general partners, during the continuation of the partnership business or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt either separately or jointly with one or more or all of its general partners.

(b) A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: *Provided, however,* That where a petition is filed in behalf of a partnership by less than all of the general partners, the petition shall allege that the partnership is insolvent. A petition may be filed separately against a partnership or jointly against a partnership and one or more or all of its general partners.”

These subdivisions should ordinarily present no difficulties of construction. When Congress provided that “. . . The petition shall allege that the partnership is insolvent,” it clearly intended that such allegation should be sufficient

to support the petition from which it likewise follows that proof thereof should entitle a petitioner to adjudication. The Referee and the District Judge fell into error by following decisions under the Bankruptcy Act prior to its amendment by the Chandler Act in 1938.

Section 5 (a) prior to the adoption of the Chandler Act in 1938, read as follows:

“A partnership during the continuation of the partnership business or after its dissolution and before the final settlement thereof, may be adjudged bankrupt.”

The Chandler Act added “either separately or jointly with one or more or all of its general partners.” This language is the first indication that it was the intent of Congress that the partnership should be considered as a separate entity. If the net assets of the individual partners must be considered as assets of the partnership, then the partnership is not being adjudicated separately.

The Chandler Act then next added subdivision (b) and provided that one or more of the general partners might file a petition upon its behalf and when so filed by less than all of such partners “the petition shall allege that the partnership is insolvent.”

Observe the absence of any language referring to the insolvency of anyone other than the partnership. Had Congress included the words “the partnership and all the members thereof” or applied the definition used in Section 67 a (5) a (1), the Referee’s construction would be amply supported, but the present construction is judicial legislation.

Elsewhere in the Chandler Act the intent to treat the partnership as a separate entity is apparent. For in-

stance, Subdivision 19 of Section I provides that a person shall be deemed insolvent "whenever the aggregate of his property" shall not be sufficient to pay his debts. Under Subdivisions 23, 33, 34 and 35 of Section I, Subdivision 19 of Section I, as applied to this situation should be read, "A partnership shall be deemed insolvent . . . whenever the aggregate of its property," etc.

Under the Bankruptcy Act before its amendment by the Chandler Act in 1938, courts had no legislative guide as a basis for determining whether or not the net assets of individual partners should be included with the assets of the partnership and some courts (there being considerable conflict in the decisions as will be hereafter discussed), held that in view of the fact that under the Bankruptcy Act the Bankruptcy Court in marshalling assets was given jurisdiction to require that if the partnerships' assets were not sufficient to pay its liabilities, the net assets of the individual partners could be administered by the Trustee and applied to the payment of the partnerships' debts, and also because under the state law each partner is liable for all of the debts of the partnership, no involuntary bankruptcy proceeding would lie if the net assets of the individual partners were sufficient to pay the partnership liabilities.

Now, however, we have further light on the intent of Congress in Section 67 which contains the very provision that appellee contends should be in Section 5, or stated differently, reads as appellee would have Section 5 read. Section 67 a (5) d (1) reads: "For the purposes of, and exclusively applicable to, this subdivision d: . . ."

“(d) A person is ‘insolvent’ when the present fair salable value of his property is less than the amount required to pay his debts; and to determine whether

a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts and also the amount realizable on any unpaid subscription to the partnership of each limited partner ;”

Here is the exact phraseology which appellee desires and, in fact, requires to sustain his position, but Congress limited its application exclusively to that particular subdivision, which concerns fraudulent and voidable transfers.

Could legislative intent be more clearly indicated? Congress said, in so many words,

“Only when considering fraudulent and voidable transfers under Section 67, the net assets of general partners shall be considered in determining solvency. When proceeding under Section 5, the partnership shall be treated as a separate entity.”

As previously stated, the point is entirely new and decisions under the Bankruptcy Act prior to the amendment furnished no precedent in construing this new section. While under the former act, some courts held that the net assets of the individual partners must be considered in determining the insolvency, the decisions were by no means uniform. *Liberty National Bank v. Bear*, 276 U. S. 213, 11 Am. B. R. (N. S.) 243, which we believe throws some indirect light on the question, states in the footnote :

“Neither of the two incidental questions upon which the lower Federal Court have differed in opinion—whether a partnership can be deemed insolvent as an entity when the individual partners are solvent, and whether a bankruptcy Court which has adjudged

a partnership a bankrupt may take possession of the individual property of a partner who has not been adjudged a bankrupt so far as is necessary to pay the partnership debts—is here involved.”

Apparently, the Referee relied upon text books, the authors of which relied upon decisions rendered before the amendment to the Bankruptcy Act in 1938.

The opinions of these textbook writers are only conclusions drawn from decisions, and are hastily drawn and entitled to little weight. Not one of these authors studied the Act or gave any consideration to its various provisions or even considered the effect of the amendment. To illustrate, permit us to direct the Court’s attention to a statement contained in Collier on Bankruptcy, one of the latest, and in many instances the most dependable, work which states, in its 14th Edition, Volume One, page 698, as follows:

“It seems logical, therefore, in determining the insolvency of a partnership, that not only must the firm assets be insufficient to pay its debts, but also that the assets of the individual members after the payment of their individual debts, be insufficient to make up the deficiency on the firm debts.”

Yet the author later in the same paragraph says:

“The Supreme Court by *dictum* approved this view, (1) although it has never passed upon the point expressly. (2) It represents the weight of authority (3), even though some courts have rejected it as being at variance with the entity doctrine (4).”

Under (1) *Francis v. McNeal*, 228 U. S. 695, 30 A. B. R. 244, is cited, and under (2) this statement made:

“The holding in *Francis v. McNeal*, n. 1, *supra*, was that the trustee of the firm could administer the estate of an unadjudicated partner.”

All the cases cited under (3) were decided prior to the Supreme Court's decision in *Liberty Nat. Bank of Roanoke, Va., v. Bear*, 276 U. S. 313, 11 A. B. R. (N. S.) 343, which ignores the author of Collier's idea of the weight of authority and approves the decisions cited under (4). A mere glance at *Francis v. McNeal* and *Liberty Nat. Bank v. Bear* is sufficient to indicate which is applicable and controlling.

While it is our contention that there are no decisions construing the Bankruptcy Act as amended in 1938 on the question here involved, yet the United States Supreme Court in *Liberty National Bank v. Bear*, which was decided later than all of the other decisions referred to in the opinion of the Referee, approved the separate entity doctrine of partnerships in bankruptcy. If a partnership under the Bankruptcy Act prior to its amendment in 1939 was a separate entity, it is still or more so under the present Act, and if it is a separate entity, then in determining its insolvency, it must be considered as a separate entity and its assets and only its assets can be considered determining insolvency. In *Liberty National Bank v. Bear* the Court said:

“The question arose whether an adjudication of the partnership as a bankrupt was possible or proper

without a similar adjudication of the individual partners. The Court answered the contention that the adjudication of the partnership as a bankrupt necessarily involved the adjudication of the individual partners as bankrupts, as follows:

‘This contention disregards entirely the principle established by the Bankruptcy Act that a partnership may be adjudged a bankrupt as a separate entity without reference to the bankruptcy of the partners as individuals.’ ”

In stating the prevailing rule, the Court, at pages 222 and 223, said:

“It has long been the established rule in the Circuit Courts of Appeals and District Courts that under section 5a of the act a partnership may be adjudged a bankrupt as a separate entity under a voluntary or involuntary petition, irrespective of an adjudication of bankruptcy against the individual partners. *In re Meyer* (C. C. A., 2d Cir.), 3 Am. B. R. 559, 98 F. 976, affirming *Chemical National Bank v. Meyer* (D. C., N. Y.), 1 Am. B. R. 565, 92 F. 896; *In re Mercur* (C. C. A., 3d Cir.), 10 Am. B. R. 505, 122 F. 384, affirming *In re Mercur* (D. C., Pa.), 8 Am. B. R. 275, 116 F. 655; *In re Stein & Co.* (C. C. A., 7th Cir.), 11 Am. B. R. 536, 127 F. 547; *Dickas v. Barnes* (C. C. A., 6th Cir.), 15 Am. B. R. 566, 140 F. 849; *In re Bertenshaw* (C. C. A., 8th Cir.), 19 Am. B. R. 577, 157 F. 363; *Mills v. Fisher & Co.* (C. C. A., 6th Cir.), 20 Am. B. R. 237, 159 F. 897; *Francis v. McNeal* (C. C. A., 3rd Cir.), 26 Am. B. R. 555, 186 F. 481; *In re Samuels & Lesser* (C. C. A., 2d Cir.), 32 Am. B. R. 436, 215 F. 845; *Armstrong v. Fisher* (C. C. A., 8th Cir.), 34 Am. B. R. 701, 224 F. 97; *Carter v. Whisler* (C. C. A., 8th Cir.),

2 Am. B. R. (N. S.) 128, 275 F. 743; *In re Dunnigan Bros.* (D. C., Mass.), 2 Am. B. R. 628, 95 F. 428; *In re Duguid* (D. C., N. C.), 3 Am. B. R. 794, 100 F. 274; *In re Garden* (D. C., N. C.), 4 Am. B. R. 31, 101 F. 553; *Strause v. Hooper* (C. C., N. C.), 5 Am. B. R. 225, 105 F. 590; *In re Stokes* (D. C., Pa.), 6 Am. B. R. 262, 106 F. 312; *In re Hale* (D. C., N. C.), 6 Am. B. R. 35, 107 F. 432; *In re Farley & Co.* (D. C., Va.), 8 Am. B. R. 266, 115 F. 359; *In re Pincus* (D. C., N. Y.), 17 Am. B. R. 331, 147 F. 621; *In re Solomon & Carvel* (D. C., N. Y.), 20 Am. B. R. 488, 163 F. 140; *In re Everybody's G. & M. Market* (D. C., Okla.), 21 Am. B. R. 925, 173 F. 492; *In re Latimer* (D. C., Pa.), 23 Am. B. R. 388, 174 F. 824; *In re Perlhefter & Shatz* (D. C., N. Y.), 25 Am. B. R. 576, 177 F. 299; *In re Lenoir-Gross & Co.* (D. C., Tenn.), 35 Am. B. R. 774, 226 F. 227."

Among the above cases cited with approval by the Supreme Court, and entirely ignored by the Referee and the Judge in this matter, is *In re Solomon & Carvel*, 163 Fed. 140, 20 Am. B. R. 488 (D. C., N. Y.), wherein it is clearly stated that a partnership may be adjudicated a bankrupt although one of the partners is solvent. The Court, at page 140, said:

"The present bankruptcy statute recognizes a co-partnership as an entity, to the extent that petition in bankruptcy can be filed against the partnership, and the partnership or any of its members may be adjudicated bankrupts, while one or more of the partners individually may be entirely solvent."

Another of the cases cited by the Supreme Court is *In re Everybody's Grocery & Meat Market*, 173 Fed. 492,

21 Am. B. R. 577 (D. C., Okla.). Two questions were raised in this proceeding: Firstly, whether it was necessary to allege the insolvency of the individual partners, and secondly, whether it was necessary to have the consent of the solvent partners before an adjudication of the partnership as a bankrupt could be had. Both questions were answered in the negative as follows:

“It was not . . . necessary for the petitioning creditors in this case to allege the insolvency of the individual partners. . . . In this case it is sought only to adjudge the partnership a bankrupt, and no proceedings are instituted against any of the individual members of the partnership. It is held that it is not necessary that the consent of the solvent members of the partnership, if any, in this case should be alleged in the petition as a prerequisite to adjudication.”

Also the *Liberty National Bank* case is cited with approval in the recent decision of *Schram v. Wrubel* (D. C. E. D. of Mich., 1940), 38 F. Supp. 357. Here the partnership secured a discharge in bankruptcy, but the individual partners did not. The Court held that the individual partners could be personally sued on a note of the partnership. That is, it was recognized that the partnership might be insolvent although the partners were not. Much weight was placed on section 15(b) of the Uniform Partnership Act which is exactly the same as section 2409(b) of the Civil Code of the State of California. This section provides as follows:

“All partners are liable . . . jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.”

Likewise we find the same rule announced in the matter of *McMurtrey & Smith* (D. C., Tex.), 142 Fed. 853, 15 Am. B. R. 427. The first headnote in that section is as follows:

“A bankrupt is insolvent and subject to adjudication as a bankrupt when the partnership property is insufficient to pay its debts, regardless of the individual property of the partners.”

The Court will note that decisions cited by the Supreme Court, from which we quote above, support our position in this matter.

Respectfully submitted,

EARL E. MOSS,

Attorney for Appellant.

No. 10249.

3

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

ELSA METZ MASON,

Appellant,

vs.

THOMAS MITCHELL,

Appellee.

BRIEF OF APPELLEE THOMAS MITCHELL.

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PAUL P. O'BRIEN

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No. 10249.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

ELSA METZ MASON,

Appellant,

vs.

THOMAS MITCHELL,

Appellee.

BRIEF OF APPELLEE THOMAS MITCHELL

Statement of Case and Question Involved.

The statement of the case as made in the appellant's opening brief is a very fair statement of the facts. We differ only with him in that portion of the brief, however, on the question involved. The question which was submitted to the lower court was not merely one of pleading. The Referee in Bankruptcy before whom the matter was tried took the position that if he listened to four or five days' court time to determine the issue of whether there was or was not, in fact, a partnership between the parties, he felt no good could result for the reason that the parties had already stipulated on the issue of insolvency. The parties had mutually stipulated that the alleged partner,

Thomas Mitchell, over and above his exempt property, had sufficient property to pay all of the alleged partner's debts and all of his own debts. The Referee therefore correctly concluded that if the partnership was solvent, no cause for a bankruptcy adjudication existed. The district judge affirmed.

ARGUMENT.

Answering Point 1: The question involved here is not a question of the sufficiency of the pleading but one of the sufficiency of the proof.

Counsel for the appellant attempts to make it appear that the question which was before the lower court depends on a question of pleading. His argument is based all on his Point 1. The amendment to the Bankruptcy Act, to-wit, the Chandler Act in 1938 made a change only in the question of pleading. It did not change the question of insolvency; it did not change the liability of partners, to-wit, that each partner is liable for all of the debts of the partnership; it did not change the substantive law that if a partnership is adjudicated a bankrupt as an entity, that the assets of the individual partners may be brought into that partnership bankruptcy to pay the partnership debts *without adjudicating the individual partners bankrupt*.

There is nothing new in the entity theory of a partnership for adjudication purposes presented by the Chandler Act of 1938. Courts have been adjudicating partnerships as such long before the effective date of the Chandler Act. We are not concerned with the entity theory here. It is immaterial whether one Circuit Court clings to the entity theory and another does not.

There can be no difference of opinion on the question cited that a partnership may be adjudicated a bankrupt without reference to the bankruptcy of the individual partners. The *Liberty National Bank* case is the destination end of the *West Virginia* case starting in 1920. The serial history of this case is found in 2 A. B. R., New Series, 545; 3 A. B. R., New Series, p. 8; 5 A. B. R., New Series, 310; 9 A. B. R., New Series, 303, and 11 A. B. R. 343.

The quotation by opposing counsel of a portion only of that opinion in *Liberty National Bank v. Baer*, 276 U. S. 215, should be qualified by the statement that the question in that case was not the question involved in the instant case. In that decision the Court itself expressly said that the question relating to partnership entity was not present and any reference to the question involved in that case here involved is *obiter*.

We quote from *Liberty National Bank v. Baer*, at page 219:

“The controversy here is solely between the bank and the trustee as the representative of the other individual creditors of the Beckers.”

And the footnote to the opinion itself on page 224 says:

“Neither of the two incidental questions upon which the lower federal courts have differed in opinion—whether a partnership can be deemed insolvent as an entity when the individual partners are solvent, and whether a bankruptcy court which has adjudged a partnership a bankrupt may take possession of the individual property of a partner who has not been adjudged a bankrupt so far as is necessary to pay the partnership debts—is here involved.”

A Partnership Is Not Insolvent When Any Partner Has Property Sufficient to Pay All the Debts of the Partnership.

There can be no question that prior to the effective date of the Chandler Act in September, 1938, the insolvency of a partnership was determined by taking into consideration the sum total of all of the property of the partnership, together with all the property of the individual members of the partnership. Every known text-book writer on bankruptcy has agreed on this.

Remington, Vol. 4, Sec. 1746:

"Sec. 1746. Partnership Not Insolvent, Unless All Partners Insolvent. A partnership is not to be deemed insolvent unless the aggregate of all its own property, together with all of the individual property of its members in excess of their respective individual indebtedness, is less than its liabilities."

Citing:

"Crancer & Co. v. Wade, 25 A. B. R. 880, 26 Okla. 757, 110 Pac. 778; Francis v. McNeal, 26 A. B. R. 555, 186 Fed. 481 (C. C. A., Pa.); *In re Duke & Son*, 28 A. B. R. 195, 199 Fed. 199 (D. C. Ga.); *Washington Cotton Co. v. Morgan & Williams*, 27 A. B. R. 838, 192 Fed. 310 (C. C. A., Ga., affirming *In re Morgan & Williams*, 25 A. B. R. 861, 192 Fed. 310); *In re Wood*, 40 A. B. R. 810, 248 Fed. 246 (C. C. A., Ky.); *Fort Pitt Coal Co. v. Diser*, 38 A. B. R. 566, 239 Fed. 443 (C. C. A., Ohio); *In re Samuels & Lesser*, 32 A. B. R. 436, 215 Fed. 845 (C. C. A., N. Y., reversing s. c. 30 A. B. R. 293, 207 Fed. 195); *In re Kobre and Ginsberg*, 35 A. B. R. 389, 224 Fed. 106 (D. C., N. Y.); *Abbott v. Anderson*, 33 A. B. R. 383, 265 Ill. 285, L. R. A. 1915F, 668, 106 N. E. 782."

Collier on Bankruptcy, 12th Edition, page 173:

“In determining the question of insolvency the individual property of the partners should be considered. Where the assets of a partnership, together with the individual properties of each partner, exceeds their liabilities, the partnership is not insolvent.”

Citing:

Matter of Kobre, et al., 35 A. B. R. 389, 224 Fed. 106.

And again in Collier on Bankruptcy, 12th Edition, page 174:

“It has been well said that this principle is at variance with the universal doctrine that under the present bankruptcy act a partnership is a legal entity, separate from the partners who compose it. But it is now well settled by the weight of authority that if the act of bankruptcy charges is one involving insolvency, the individual property of the partners must be combined with the property of the partnership in determining the insolvency of the partnership; and that a partnership is not bankrupt so long as one of the members who compose it is individually solvent.”

Citing:

Francis v. McNeal (Cir. Ct. of App., 3rd Cir.),
26 A. B. R. 555, 186 Fed. 481, affirmed in 228
U. S. 695; 57 L. Ed. 1029.

In that case, the Court said:

“A partnership cannot be adjudged a bankrupt, in an involuntary proceeding, unless it has committed an act of bankruptcy. If the act charged be one involving insolvency, since every partner is liable in

solido for all the partnership debts, the adjudication against the partnership must be based on allegations and proofs that the assets of its members, in excess of their individual debts, plus the assets of the partnership, are insufficient to pay the partnership debts. Otherwise there is no partnership insolvency, notwithstanding the entity doctrine."

To the same effect:

Tumlin v. Bryan (C. C. A., 5th Cir.), 21 Am. B. R. 319, 165 Fed. 166, 91 C. C. A. 200, 21 L. R. A. (N. S.) 960.

In *Worrell v. Whitney*, 24 A. B. R. 749, 179 Fed. 1014:

"That doctrine furnishes a direct proceeding against the partnership as a legal entity, but it does not authorize an adjudication of bankruptcy against a partnership, where the act of bankruptcy charged is one involving insolvency, unless as above stated, it is shown that there is an insufficiency of partnership and individual assets to pay the partnership debts. If a partnership is insolvent, in the sense above explained, all the assets of the partnership and its members are needed for the proper winding up of the partnership affairs."

In re Duke & Son (Ref., Ga.), 29 Am. B. R. 93:

"A partnership cannot be compulsorily adjudicated a bankrupt where any partner appears to be solvent to the extent of having a surplus of property over the debts for which he is personally liable and the debts for which he is liable as a member of the firm. *Matter of Kobre* (D. C., N. Y.), 35 Am. B. R. 389, 224 Fed. 116."

Brandenberg on Bankruptcy, Section 41:

“But the better rule, supported by a recent decision of the Supreme Court, is that the insolvency of the members of the firm as individuals is essential to the insolvency of the partnership, and that all the property which may be made liable for the firm debts must be considered in determining whether or not the copartnership is solvent. Partners are liable *in solido*, and in order that a firm may be adjudged a bankrupt, it must be shown not only that the copartnership is insolvent, but that every one of its members is individually insolvent.”

Browne on Bankruptcy, Chapter II, Sec. 7:

“The better view and the true rule appears to be that in partnership bankruptcy, jurisdiction is conditional, *i. e.*, subject to the condition that both the partnership, as such, and all the individual partners, *are* insolvent.”

Weinstein on Bankruptcy, Section 5.

Gilbert's Collier on Bankruptcy, 4th Edition, Section 225, page 138:

This author, after discussing the entity theory, says:

“Actually, however, this theory is not adhered to in all instances, as will hereafter appear.”

The same author thereafter in Section 228 of the text says:

“There can be no final settlement of a partnership until all the debts are paid.”

and quotes from the opinion of Mr. Justice Holmes in *Francis v. McNeal*, 228 U. S. 695:

“The fact remains as true as ever that partnership debts are debts of members of the firm, and that the

individual liability of the members is not collateral like that of a surety, but primary and direct, whatever preference there may be in the marshalling of assets."

And in the text further, Section 231:

"In determining the question of insolvency of a partnership it must not only be shown that the partnership assets are insufficient but also that the assets of individual members, after paying their debts, are not enough to make up the difference. This seems to depart from the doctrine that a partnership is a legal entity, separate from the partners who compose it. Nevertheless, it is well settled that, if the act of bankruptcy charges is one involving insolvency, the individual property of the partners must be combined with the property of the partnership in determining the insolvency of the partnership; and that a partnership is not bankrupt so long as one of the members who compose it is individually solvent."

In *Black on Bankruptcy*, in the text, supported by the following authorities, we find:

"To a certain extent, the latest decisions on the point attempt to reconcile these contrary views, in holding that the property of a solvent partner is not drawn into the administration, where only the firm is adjudged bankrupt, but that if the adjudication is based upon or involves the insolvency of the firm (which necessarily implies the insolvency of each of the partners as well), then even unadjudicated partners may be compelled to turn over their separate assets to the trustee."

Black on Bankruptcy, 4th Ed.

Citing:

Francis v. McNeal, *supra* (C. C. A., Pa.), affirmed in 228 U. S. 695.

The Statutory Law and the Law Stare Decisis Has
Not Been Changed by the Chandler Act nor by
Judicial Decisions Subsequent Thereto.

Section 5 of the Chandler Act reads in part:

"Sec. 5. Partners—*a.* A partnership, including a limited partnership containing one or more general partners, during the continuation of the partnership business or after its dissolution and before the final settlement thereof, *may be adjudged a bankrupt either separately or jointly with one or more or all of its general partners.*

"*b.* A petition may be filed by one or more or all of the general partners in the separate behalf of a partnership or jointly in behalf of a partnership and of the general partner or partners filing the same: Provided, however, that where a petition is filed in behalf of a partnership by less than all of the general partners, the petition *shall* allege that the partnership *is insolvent*. A petition may be filed separately against a partnership or jointly against a partnership and one or more or all of its general partners."

While Section 67, as re-written in the Chandler Act, by its terms is made applicable exclusively to this subdivision of the Act under the terms of Subdivision d(1), nevertheless it furnishes us with a recital which shows that the rule has not been changed. We quote from a portion of d(1):

"And to determine *whether a partnership is insolvent, there shall be added to the partnership property the present fair salable value of the separate property of each general partner in excess of the amount required to pay his separate debts and also the amount realizable on any unpaid subscription to the partnership of each limited partner.*"

The liability of a partner is one imposed by law for *all* partnership debts and is primary. The definition of a partner in California is essentially different than the definition of a partner in the other forty-seven states. It would appear that the lawmakers in California in early days anticipated that all business ventures would be profitable. In other states, partnerships are defined to be agreements of two or more persons to carry on a venture for the division of profits and the payment of losses. In California, the definition is:

“Sec. 2400. Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.”

The liability of a partner for the debts of course exists. That liability is one by which each partner is primarily liable for all the debts. That liability is not one of guaranty, it is not one of surety, it is not a secondary liability.

The Theory of Marshaling Assets, the Taking of the Property of the Individual Partners to Pay Partnership Debts Is Illustrative of the Non-Entity Theory of Partnership.

It appears to us that the best expression which has been given for the reason why a partnership, as such, may be adjudicated a bankrupt apart from the bankruptcy of the individual members who composed the partnership, is the theory of legal fiction. That legal fiction has never been carried to the extent of recognizing it as a legal entity which can hold real property in its own name, or which will permit the entity to sue or be sued in its own name.

That theory as a fiction of law has been used for the purpose of administering the assets of a partnership, but the law has never released the partners from their individual liability to pay all the debts of the partnership out of their individual assets. The Chandler Act of 1938, as the law previous to that time, recognizes the equitable theory of marshalling assets. It makes the provision a statutory one. Subdivision d of Section 5, under the title "Partners" reads:

"d. The court of bankruptcy which has jurisdiction of one of the general partners may have jurisdiction of *all the general partners* and of the administration of the partnership and individual property."

As long as the doctrine of marshalling assets exists, and as long as the primary liability of a partner for partnership debts exist, then the law must require the marshalling of assets in the other sense to determine insolvency. To limit the inquiry for the purpose of insolvency solely to the assets of the partnership and excluding the individual assets of the partners is to deny the very theory upon which the marshalling of assets is based, to-wit, the primary liability of the partners.

Loveland on Bankruptcy, Section 258, at page 535:

"The test of solvency or insolvency of a partnership is whether the firm debts may be paid in full with property which is liable for such payment. Each partner is liable *in solido* for the debts of the firm so that they are debts of each individual partner. A partnership is, therefore, insolvent only when the firm debts exceed the value of the property of the

firm, together with that of the partners applicable to the payment of firm debts.

“There are cases which hold that a partnership is insolvent when the firm property is insufficient to pay firm debts. These cases go upon the theory that the firm entity alone is to be considered. But the doctrine of partnership entity does not disturb substantive rights long recognized by courts of equity and bankruptcy. The better rule is that a firm is solvent while any of the partners are able to pay the firm debts.”

Respectfully submitted,

RUPERT B. TURNBULL and

KENNETH WHITE,

Attorneys for Thomas Mitchell, Appellee, only.

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

In Five Volumes

VOLUME I

Pages 1 to 493

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

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United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

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Respondent,

NATIONAL MARITIME UNION OF AMERICA,

Intervener.

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VOLUME I

Pages 1 to 493

Upon Petition to Review, and Request for Enforcement
of, Order of the National Labor Relations Board

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United States of America
Before the National Labor Relations Board
16th Region

Case No. XVI C270

Date filed Aug. 26, 1938.

In the Matter of

THE TEXAS COMPANY, MARINE
DIVISION

and

THE NATIONAL MARITIME UNION
Port Arthur Branch

AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The Texas Company, Marine Division has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On the following dates it, by its officers, agents and employees, terminated the employment of the following:

The Texas Company vs.

| | | | |
|--------------------|---------------------|--------------------|-----------------|
| April 18, 1938 | F. W. Zinkiewicz | Able Bodied Seaman | SS Rhode Island |
| April 17, 1938 | D. G. MacClenan | Able Bodied Seaman | SS Rhode Island |
| April 18, 1938 | C. Buckless | Boatswain | SS Nevada |
| April 19, 1938 | J. Gordon Rosen | Able Bodied Seaman | SS Nevada |
| July 14, 1938 | F. W. Zinkiewicz | Able Bodied Seaman | SS Washington |
| July 14, 1938 | C. Buckless | Quartermaster | SS Washington |
| July 14, 1938 | J. Gordon Rosen | Able Bodied Seaman | SS Washington |
| September 19, 1937 | James P. Blasingame | Quartermaster | SS California |
| September 19, 1937 | Arthur Spencer | 2nd Pumpman | SS California |
| September 19, 1937 | J. Gordon Rosen | Able Bodied Seaman | SS California |
| July 30, 1938 | A. P. Lortie | Able Bodied Seaman | SS Roanoke |
| July 30, 1938 | John Helton | Able Bodied Seaman | SS Roanoke |
| July 30, 1938 | C. T. Adams | Ordinary Seaman | SS Roanoke |
| July 17, 1938 | R. M. Lyons | Ordinary Seaman | SS Roanoke |

because of their membership and activities in behalf of the National Maritime Union, a labor organization, and at all times since such dates it has refused and does now refuse to employ the above named employees.

By the acts set forth in the paragraphs above, and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION

Port Arthur Branch

By: L. C. AMES,

Business Agent

311½ Proctor St.,

Port Arthur, Texas.

Subscribed and sworn to before me this 24 day of August, 1938.

[Seal]

MRS. R. LYLES,

Notary Public, Jefferson County, Texas

[Title of Board and Cause.]

COMPLAINT

It having been charged by the National Maritime Union, Port Arthur Branch, a labor organization, that The Texas Company, hereinafter referred to as the respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board by the Regional Director for the Sixteenth Region of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

1. The respondent, The Texas Company, is and was at all the times hereinafter mentioned a corporation organized under and existing by virtue of the laws of the State of Delaware with its principal offices located in New York City, New York, and is now and has at all times hereinafter mentioned been engaged in the business of the production, refining, sale and distribution of petroleum and petroleum products in the various states of the United States and foreign countries.

2. The respondent, in the course and conduct of its business, operates refineries at or near Houston, Beaumont, and Port Arthur, Texas, and maintains offices at Port Arthur, Texas, among other things, for the purpose of operating of what is known as its Marine Division.

3. The respondent, in the course and conduct of its business, owns, operates and maintains approximately twenty-eight sea-going vessels for the purpose of transporting and distributing petroleum and petroleum products processed at its refineries as aforesaid.

4. The respondent, in the course and conduct of its business, causes and has continuously caused over a long period of time the crude oil used in its refineries as aforesaid to be piped or transported from oil fields in the States of Texas, Oklahoma, and other states, and causes and has continuously caused said petroleum and petroleum products to be transported and distributed in interstate commerce through or between states of the United States other than the State of Texas and to foreign countries by means of the sea-going vessels above mentioned. The respondent, in the course and conduct of its business, transported or caused to be transported on its sea-going vessels as above mentioned, approximately 32,705,707 barrels of petroleum and/or petroleum products into and through states of the United States other than the State of Texas and foreign countries from its port or terminal at Port Arthur, Texas, between November, 1937 and April, 1938.

5. The respondent, by its officers, agents and/or employees, while operating as described above, did discharge the following named employees, and on or about the dates mentioned, in its Marine Division, and has at all the times since said dates refused to reinstate said individuals.

The Texas Company vs.

| | | | |
|--------------------|---------------------|--------------------|-----------------|
| April 18, 1938 | F. W. Zinkiewycz | Able Bodied Seaman | SS Rhode Island |
| April 17, 1938 | D. G. MacClellan | Able Bodied Seaman | SS Rhode Island |
| April 18, 1938 | C. Buckless | Boatswain | SS Nevada |
| April 19, 1938 | J. Gordon Rosen | Able Bodied Seaman | SS Nevada |
| July 14, 1938 | F. W. Zinkiewycz | Able Bodied Seaman | SS Washington |
| July 14, 1938 | C. Buckless | Quartermaster | SS Washington |
| July 14, 1938 | J. Gordon Rosen | Able Bodied Seaman | SS Washington |
| September 19, 1937 | James P. Blasingame | Quartermaster | SS California |
| September 19, 1937 | Arthur Spencer | 2nd Pumpman | SS California |
| September 19, 1937 | J. Gordon Rosen | Able Bodied Seaman | SS California |
| July 30, 1938 | A. P. Lortie | Able Bodied Seaman | SS Roanoke |
| July 30, 1938 | John Helton | Able Bodied Seaman | SS Roanoke |
| July 30, 1938 | C. T. Adams | Ordinary Seaman | SS Roanoke |
| July 17, 1938 | R. M. Lyons | Ordinary Seaman | SS Roanoke |

6. The respondent discharged the individuals named in paragraph 5 above and refused to reinstate them for the reason that they, and each of them, joined and/or assisted a labor organization of the respondent's employees, to-wit, the National Maritime Union, Port Arthur Branch, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection.

7. By the discharge of and the refusal to reinstate the individuals named in paragraph 5 above and as above set forth, the respondent did discriminate and is discriminating in regard to the hire and the tenure of employment of the above-named individuals, and did discourage and is discouraging membership in the said labor organization and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act.

8. The respondent, while operating its business as above set forth, through its officers, agents and employees, namely, C. L. Hand and various mates and captains, on its ships as aforesaid, has since on or about August 1, 1937 made various and sundry statements to its employees discouraging affiliation in or activity in behalf of the aforesaid union, such as statements made by one Captain Bergman on or about June 24, 1938, when he stated to one J. Gordon Rosen that he "would not recognize Rosen or any other representative of the crew as the collective bargaining agent", and such as the state-

You are further notified that you have the right to file with the Regional Director for the Sixteenth Region, with offices at 420 United States Court-house, Fort Worth, Texas, acting in this matter as agent of the National Labor Relations Board, an answer to the attached complaint on or before the 12th day of September, 1938.

Enclosed herewith for your information is a copy of the Rules and Regulations—Series 1, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly invited to Article II of said Rules and Regulations.

A copy of the charge filed herein is also attached hereto.

In Witness Whereof the National Labor Relations Board has caused this, its complaint and Notice of hearing, to be signed by the Regional Director for the Sixteenth Region on the 3rd day of September, 1938.

[Seal]

EDWIN A. ELLIOTT,

Regional Director, National
Labor Relations Board, Six-
teenth Region.

[Title of Board and Cause.]

AMENDED ANSWER

The Texas Company, a Delaware corporation, respondent in the above-entitled proceeding, answering the complaint herein, shows and alleges:

1. That it admits the facts alleged in paragraph of the complaint numbered "1".

2. That it admits the facts alleged in paragraph of the complaint numbered "2".

3. That it admits the facts alleged in paragraph of the complaint numbered "3".

4. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "4" except the allegation that it causes and has caused crude oil to be piped or transported from oil fields in the states of Texas, Oklahoma and other states, and that it causes and has caused petroleum and petroleum products to be transported by means of sea-going vessels between states of the United States and to foreign countries; and except that it alleges that it is without knowledge as to whether the acts referred to constitute interstate commerce.

5. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "5", except that it admits that it discharged the following named individuals, on or about the dates mentioned, and has at all times since said dates refused to reinstate said individuals:

| | | |
|----------------|------------------|-----------------|
| April 18, 1938 | C. Buckless | SS Nevada |
| April 19, 1938 | J. Gordon Rosen | SS Nevada |
| July 14, 1938 | F. W. Zinkiewycz | SS Rhode Island |
| July 14, 1938 | J. Gordon Rosen | SS Washington |
| July 30, 1938 | C. T. Adams | SS Roanoke |
| July 30, 1938 | A. P. Lortie | SS Roanoke |
| July 30, 1938 | John Helton | SS Roanoke |
| July 14, 1938 | C. Buckless | SS Washington |

Respondent alleges that in answering paragraph "5" it is using the word "discharge" in the sense that the contracts of employment with said individuals to-wit: Shipping Articles, were terminated pursuant to their terms and respondent declined to enter into new contracts of employment with said individuals on or about the dates above referred to.

Further answering paragraph "5" of the complaint, respondent denies that it discharged (as the term "discharged" is commonly defined and understood) those persons named in paragraph "5" of the complaint upon the dates mentioned, and it denies that it has refused and still refuses to reinstate them; but, on the contrary, states that their term of employment with respondent had terminated upon the dates mentioned in accordance with the terms of the written Shipping Articles of contract between said persons and respondent.

6. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "6".

7. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "7".

8. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "8".

9. That it denies each and every fact and conclusion alleged in paragraph of the complaint num-

bered "9", except that respondent admits that it has denied passes to union representatives to board vessels of respondent. Respondent alleges, however, that it has always been its policy, and still is, to deny passes to anyone to board its vessels other than duly authorized employees and representatives of respondent, and that in carrying out said policy it has not in any way or at any time discriminated between any union or labor organizations.

10. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "10".

11. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "11".

Wherefore, respondent respectfully prays that the complaint herein be dismissed.

THE TEXAS COMPANY

By J. P. RONEY

General Manager, Marine
Department

Address of Respondent:

The Texas Company,
135 East 42nd Street,
New York, New York.

Attorney for Respondent:

Albert E. Van Dusen,
135 East 42nd Street,
New York, New York.

The State of Texas,
County of Jefferson—ss.

Before the undersigned, a Notary Public in and for the said County and State, personally appeared J. P. Roney, known to me to be a credible person, who, after being duly sworn, upon oath deposes and says that he is General Manager of the Marine Department of The Texas Company, the Respondent in the above case; that he has read the above and foregoing answer and is familiar with the facts stated therein; that all of the facts stated therein are true and correct, except those facts which are therein stated to be on information and belief, and as to such facts he verily believes them to be true.

J. P. RONEY

Subscribed and sworn to before me this 12th day of September A. D. 1938.

[Seal]

HELEN McCURDY

Notary Public in and for Jefferson County, Texas.

United States of America
Before The National Labor Relations Board
Sixteenth Region

Case No. XVI-C-270

In the Matter of

THE TEXAS COMPANY, MARINE
DIVISION

and

NATIONAL MARITIME UNION,¹ PORT
ARTHUR BRANCH.

INTERMEDIATE REPORT

Upon charges and amended charges duly made and acting pursuant to proper authority, the National Labor Relations Board, by Edwin A. Elliott, its Regional Director for the Sixteenth Region, issued its complaint against The Texas Company, Marine Division, the respondent herein. The complaint and notice of hearing thereon were duly served upon the respondent.

The complaint, as amended, alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the

1. According to Board Exhibit 6, the correct name of the Union is National Maritime Union of America.

National Labor Relations Act.² The respondent's answer admitted some of the specific facts alleged in the complaint, but denied that it had engaged in any unfair labor practices.

At the commencement of the hearing, the Board moved to amend its complaint to include an allegation that the respondent discharged Rufus H. Andrews and Jack Wilson, on or about July 8, and March 17, 1938, respectively, for the reason, among others, that they "joined and/or assisted" the Union. The motion was granted without opposition. On the consent of the parties the respondent's answer was deemed amended to include a denial of the charge that the said Andrews and Wilson were discharged in violation of the Act.

During the course of the hearing, the respondent moved to strike certain testimony given by the witness J. Gordon Rosen. Decision was reserved. The motion is hereby denied. The respondent also moved to strike "the testimony of all witnesses in regard to conversations between witnesses and any master or officer of any vessel belong (belonging) to The Texas Company or any officer or agent of The Texas Company regarding labor union matters or labor union activities as proof of unfair labor

2. The National Labor Relations Act is herein referred to as the Act, the National Labor Relations Board is herein referred to as the Board, the National Maritime Union of America, Porth Arthur Branch is herein referred to as Union, and The Texas Company, Marine Division, is herein referred to as the respondent.

practices." Decision was reserved. The motion is hereby denied. Decision was likewise reserved on the respondent's motion to strike all testimony adduced by the Board in support of the allegations of the amended complaint in respect to the discharge of F. W. Zinkewycz from the S. S. "Washington" on July 14, 1938. The motion is hereby denied.

During the course of the hearing, the Board moved to dismiss the amended complaint as to the following named employees who were alleged to have been discharged on the following named dates from the following named boats:

| Employee | Date of Dismissal | Boat |
|------------------|-------------------|--------------------|
| F. W. Zinkewycz | April 18, 1938 | S. S. Rhode Island |
| D. G. MacClennan | April 17, 1938 | S. S. Rhode Island |
| Arthur Spencer | Sept. 19, 1937 | S. S. California |
| John Helton | July 30, 1938 | S. S. Roanoke |
| C. T. Adams | July 30, 1938 | S. S. Roanoke |
| R. M. Lyons | July 17, 1938 | S. S. Roanoke |
| Jack Wilson | March 17, 1938 | S. S. Washington |

The said motion was granted without opposition.

The respondent, during the course of the hearing, moved to dismiss that portion of the amended complaint which alleged that Rufus H. Andrews and F. W. Zinkewycz were dismissed by the respondent on July 8, and July 14, 1938, respectively, for union activities. The motion is hereby granted.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board,

conducted a hearing on September 12, 13, 14, 15, 16, 19, 20, 21 and 22, 1938, at Port Arthur, Texas. On November 28 and 29, 1938, a further hearing was conducted by Charles E. Persons, who had been, pursuant to an order of the Board, designated Trial Examiner in the place and stead of the undersigned. At the hearing all parties were afforded an opportunity to participate, to call, examine and cross-examine witnesses and to introduce other evidence. At the conclusion of the hearing the parties were afforded a reasonable opportunity to argue orally before Trial Examiner Persons and were advised by him that they would be given an opportunity for oral argument before the Board upon request to the Board made within ten (10) days from the receipt of the Intermediate Report. The parties were further advised by the said Persons that they might file briefs with him. The parties did not care to avail themselves of the opportunity of arguing orally before or filing briefs with the said Persons. At the close of the hearing, counsel for the respondent made several motions to dismiss the amended complaint. Ruling was reserved on the said motions, which are hereby denied, except in so far as they relate to that portion of the amended complaint alleging that Rufus H. Andrews and F. W. Zinkewycz were discharged for union activities on July 8 and July 14, 1938, in which respect the motions of the respondent are granted.

The Issues Involved

It is the contention of the Board that the respondent engaged in and was engaging in, at the time of the issuance of the complaint herein, unfair labor practices in violation of the Act, in that it discharged for union activities the following named employees on the following named dates from the following named ships:

| Employee | Date of Dismissal | Ship |
|---------------------|-------------------|------------------|
| J. Gordon Rosen | Sept. 19, 1937 | S. S. California |
| | April 19, 1938 | S. S. Nevada |
| | July 14, 1938 | S. S. Washington |
| F. W. Zinkiewycz | July 14, 1938 | S. S. Washington |
| C. Buckless | April 18, 1938 | S. S. Nevada |
| | July 14, 1938 | S. S. Washington |
| James P. Blasingame | Sept. 19, 1937 | S. S. California |
| A. P. Lortie | July 30, 1938 | S. S. Roanoke |
| Rufus H. Andrews | July 8, 1938 | S. S. California |

It is also the contention of the Board (1) that the captains, mates and other officers of the several hereinabove-mentioned boats, made disparaging remarks to the respondent's employees from time to time regarding the union; (2) that these remarks were made for the sole purpose of discouraging membership in the said Union; and (3) that the respondent discriminated against the Union when hiring unlicensed seamen.

The respondent contends, however, (1) that at no time did any of its officials make any disparaging remarks about the Union to its employees; (2) that

if any official of the respondent did make any remarks whatsoever about the Union to the employees, they were only the expressions of the thoughts of the individual or individuals who is or are charged with making the said remarks, and that the respondent should not be held accountable for such remarks, if any were uttered, because the first amendment of the Constitution of the United States "prohibits the Congress of the United States from making any law abridging the freedom of speech or of the press"; (3) that the said Rosen, Buckless, Blasingame and Lortie were either dismissed for good and sufficient cause or quit voluntarily; (4) that the said dismissed employees now have and at the time of the hearing had obtained "substantially equivalent employment elsewhere and therefore ceased to be employees of The Texas Company"; (5) that the aforesaid four dismissed employees' "employment with respondent had terminated upon the dates mentioned (in the amended complaint) in accordance with the terms of the written Shipping Articles of Contract between said persons and respondent"; and (6) the respondent at no time discriminated against the Union in regard to hiring unlicensed seamen.

Upon the record thus made and from his observation of the witnesses who appeared before him, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact

I. Respondent

1. The predecessor company of the present The Texas Company was duly incorporated under and by virtue of the laws of the State of Texas in 1902. The present Company which is capitalized for \$250,000,000, was duly incorporated under and by virtue of the laws of the State of Delaware in 1927, and is a wholly owned subsidiary of The Texas Corporation.

2. The gross receipts of the respondent for the fiscal year ending December 31, 1937, amounted to upwards of \$280,000,000.

3. According to the respondent's last franchise tax return to the Secretary of State of Texas, covering the fiscal year ending December 31, 1937, 13.809 per cent of its business was reported as intrastate, and 86.191 per cent as interstate in character.

4. The respondent operates a refinery at Galena Park, Texas, near the city of Houston. At this refinery a variety of petroleum products are manufactured. Chief among these are gasoline and fuel oils. Gasoline is the principal product, better than 25 per cent of the total throughput of crude being devoted to the production of gasoline.

5. The crude oil used in the Galena Park Refinery comes principally from producing wells in Texas and New Mexico. Most of the crude moves to the refinery through pipe lines operated by The Texas New Mexico Pipe Line Company, the ma-

jority of the stock in which is owned by The Texas Corporation. This company is a common carrier with tariffs prescribed by the Interstate Commerce Commission. A negligible amount of crude is received by means of tank cars.

6. The average daily throughput of the refinery is approximately 20,000 barrels. Of the finished products, approximately 75 per cent are shipped out of Galena Park by means of seagoing tankers destined for points outside of the State of Texas.

7. Unfinished crude distillates are pumped by means of a pipe line to the Port Arthur, Texas, refinery of the respondent.

8. The Galena Park Refinery is adjacent to the Houston ship channel, a deep sea outlet to the Gulf of Mexico, and on the respondent's property are docks at which tankers are loaded.

9. The Port Neches Works of the respondent are located at Port Neches, Texas. The principal products manufactured at the Port Neches Works are roofing, asphalt, steel barrels, wood barrels and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude is obtained from the States of Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico.

10. All of the felt, slate, sheet steel and paper is procured from sources outside of the State of Texas.

11. At the Port Neches docks are berths for sea-going vessels. Most of the roofing and asphalt leaves the Port Neches Works by means of tanker and/or freighter bound for destinations outside of the State of Texas. All of the barrels and drums manufactured at Port Neches are utilized by the respondent as containers for its own products.

12. That portion of the daily throughput which is not used in the production of asphalt is pumped, after the primary distillation process, to another refinery of the respondent at Port Arthur, Texas, 10 miles away, where the refining process is completed. In finished form, a substantial per cent of the crude oil distillates pumped to Port Arthur eventually reach a destination outside of the State of Texas.

13. Products of the respondent are in part distributed by means of 2100 wholesale outlets and over 40,000 retailers located in most of the States of the United States. Most of these products carry registered trade-marks.

14. The respondent owns, maintains and operates through what is known as its Marine Division, approximately 28 ocean-going vessels, having an average capacity of 11,000 tons, all said vessels being registered with the United States Department of Commerce. The respondent maintains its principal office for Marine Division in New York City, New York, and other offices are located in Chicago, Illinois, Norfolk, Virginia, Los Angeles, California, and Port Arthur, Texas.

15. Said vessels are used by the respondent in transporting the aforesaid petroleum and all petroleum products of the respondent between the Gulf ports listed below and the following ports of the United States and foreign countries:

Port Arthur, Houston, Corpus Christi, Texas

New Orleans, Louisiana

Mobile, Alabama

Tampa, Florida

Charleston, South Carolina

Claymont, Delaware

Bayonne, New Jersey

Providence, Rhode Island

Portland, Maine

Norfolk, Virginia

Baltimore, Maryland

Portland, Oregon

Los Angeles, California

Seattle, Washington

San Francisco, California

Liverpool, England

Rio de Janeiro, Brazil

Curacao, Dutch West Indies

II. The Organization Involved

16. The National Maritime Union of America, affiliated with the Committee for Industrial Organization, hereinafter referred to as the C. I. O., was founded on May 3, 1937, and is a labor organization within the meaning of the Act. It admits to membership all unlicensed seamen employed by the respondent.

III. The Unfair Labor Practices

A. Interference, restraint and coercion

17. On or about November 1, 1936, there was a general strike called in the shipping industry of the United States which lasted until sometime in the early part of January 1937. Immediately after the cessation of the said strike, the "rank and file" of the International Seamen's Union,³ formed the National Maritime Union of America, which later became affiliated with the C. I. O.

18. The Union soon after its formation began organizing the unlicensed seamen aboard the respondent's ships. The Port Arthur Branch of the Union became very active in soliciting membership from among the respondent's unlicensed seamen. Because it was, and it still is, the respondent's policy to refuse permission to a delegate or a representative of any labor organization to board its boats in order to conduct organizational activities, the Union could only obtain new members by having its members solicit membership and by having its members distribute union literature aboard the respondent's boats.

19. The record is clear that on account of the respondent's said policy, the Union has been handicapped in its efforts to obtain new members. Moreover, because of the respondent's antipathy toward

3. An affiliate of the American Federation of Labor.

labor unions among its unlicensed personnel, at least four union members were discharged for union activities.

20. The four union members who were discharged by the respondent for union activities, as will be more fully related below, were members of the crew of the S. S. Washington, S. S. Nevada, S. S. California, and the S. S. Roanoke. The captains, mates and others who were in the respondent's employ in a supervisory capacity aboard the aforementioned boats were openly and outspokenly adverse to any union activities aboard the boats. The statements which were attributed to them by the Board's witnesses clearly show that they intended to allow no union to get a foothold upon their boats.

21. Mr. Ernest Zihrul, a witness called by the respondent, testified that he was a member of the Union and was then a quartermaster of the S. S. Washington at the time Buckless, Rosen and Zinkewycz were members of the crew. During the course of his examination by the Board's counsel, he stated that prior to the arrival of the above three men the Union held no meetings aboard the S. S. Washington; that soon after the arrival of Buckless, Rosen and Zinkewycz, union meetings were held and that Rosen presided over them. However, the above-named three men only remained members of the crew for a short time before they were dis-

missed⁴ from the respondent's employ, the details of which are set forth below.

22. Union activities aboard the S. S. Roanoke were at a standstill until the advent of Lortie. His stay aboard the boat was likewise short-lived. The details of his dismissal are also set forth below.

23. Rosen's arrival aboard the S. S. Nevada and the S. S. California brought new life to the Union and under his leadership regular union meetings were again started. As soon as Rosen's and Blasingame's activities and affiliations on behalf of the Union became known to the captain and the mates of the S. S. California, the services of both Rosen and Blasingame were soon dispensed with by the respondent.

24. In order to frustrate the union's plans to organize the unlicensed personnel aboard the respondent's boats, the captains and the mates of S. S. Washington, S. S. Nevada, S. S. California and S. S. Roanoke made many disparaging remarks about the Union to the members of the crew. The following are some of the statements attributed to the officers of the above named boats by the Board's witnesses:

"I want you to understand something right now. There is to be no drunkenness assisting

4. "Dismissed" is used throughout this report instead of "discharged" in order not to confuse the word "discharge" with "the certificate of discharge" which the seamen receive at the end of their employment.

(missing) watches or union agitating aboard here.”

“He (Mate Baldwin of the S. S. California) told me (Quartermaster Blasingame of the S. S. California) all the time that he didn’t have any use for the union whatsoever.”

“He (Baldwin) told me (Blasingame) he belonged to some union out on the west coast, and he got gyped out of about \$50.00, and he never had use for a union since.”

“There is a man who won’t ride this ship long.” (The person referred to wore a union button)

“Well, if he is (a union man) he won’t be on this ship very long.”

“There is one of your rank and file ships. Don’t you think this ship looks better?”

“You can’t ride this ship any more. Go ride one of your rank and file ships.”

“These guys aren’t going to ride this ship. This ship is no union ship and they ain’t going to ride it.”

25. The Board’s witnesses attributed many other similar remarks to the officers of the various respondent’s ships, most of which remarks were denied by them. It is highly improbable that all the Board’s witnesses were not telling the truth. The undersigned finds that the statements attributed to the said captains and mates were made by them and were made for the sole purpose of discouraging membership in the Union.

26. Moreover, several of the dismissed employees

testified that when they arrived on the boat for the first time, they were queried by either the captain or the first mate regarding their union affiliations. They were warned at that time by the officials of the boat that no union activities would be permitted aboard the boat.

27. By the activities hereinabove described, the respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

28. By the said activities, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America.

B. The discriminatory dismissals.

29. The complaint, as amended, alleged that the following named employees were dismissed by the respondent from the following named boats on the following named dates because they joined and/or assisted the Union:

| Employee | Date of Dismissal | Boat |
|---------------------|-------------------|--------------------|
| J. Gordon Rosen | Sept. 19, 1937 | S. S. California |
| | April 19, 1938 | S. S. Nevada |
| | July 14, 1938 | S. S. Washington |
| F. W. Zinkiewycz | April 18, 1938 | S. S. Rhode Island |
| | July 14, 1938 | S. S. Washington |
| C. Buckless | April 18, 1938 | S. S. Nevada |
| | July 14, 1938 | S. S. Washington |
| James P. Blasingame | Sept. 19, 1937 | S. S. California |
| A. P. Lortie | July 30, 1938 | S. S. Roanoke |
| Rufus H. Andrews | July 8, 1938 | S. S. Australia |
| D. G. MacClennan | April 17, 1938 | S. S. Rhode Island |
| Arthur Spence | Sept. 19, 1937 | S. S. California |
| John Helton | July 30, 1938 | S. S. Roanoke |
| C. T. Adams | July 30, 1938 | S. S. Roanoke |
| R. M. Lyons | July 17, 1938 | S. S. Roanoke |
| Jack Wilson | March 17, 1938 | S. S. Washington |

30. During the course of the hearing, counsel for the Board moved to dismiss the amended complaint as to Jack Wilson, R. M. Lyons, C. T. Adams, John Helton, Arthur Spence, D. G. MacClennan, and the discharge of F. W. Zinkiewicz's dismissal on April 18, 1938. The motion was granted without opposition. The following evidence was adduced with respect to the other six alleged to have been discriminatorily dismissed:

31. J. Gordon Rosen. Rosen became a member of the Union at its inception, and sometime in the spring of 1937 became very active on its behalf. He openly circulated union literature and openly solicited members.

32. He had at least 3 years' experience as an able-bodied seaman before he was employed by the respondent, in that capacity, on October 24, 1935 and assigned to the S. S. Nevada.

33. On February 2, 1936, while the boat was in New Orleans, Rosen decided to leave the Nevada, and according to his testimony the following colloquy took place between the captain, the first mate and himself:

“Q. When you left that ship, did you leave of your own desires?

A. Yes, sir. The captain even tried to hold me on there. So did the mate.

Q. How do you mean?

A. Well, the mate told me, ‘There is no need for you quitting here. You can go to

Port Arthur with us.' This was in New Orleans.

I told him, 'I want to get off here.'

Q. For reasons of your own?

A. For reasons of my own. I went up and saw the captain, Captain Swanson. He said, 'It is going to be hard to get a man in your place.'

I said, 'Well, I want to quit here.'

He said, 'Well, I don't think I can give you your money unless you come to Port Arthur with us.'

I said, 'I will take a chance on that.'

I left and went and packed up my clothes.

Q. Did he give you your money?

A. Well, after I packed up my clothes and was ready to go ashore the mate called me and told me, 'The captain will give you your money.'

Q. What was the Mate's name?

A. Tranberg; Carl Tranberg."

34. The record is barren of any evidence of union activities by Rosen while he was on the S. S. Nevada between October 24, 1935 and February 2, 1936.

35. On June 30, 1937, Rosen was rehired by the respondent as an able-bodied seaman and assigned to the S. S. California. Rosen testified that when he reported for duty, first mate Baldwin said to him, "there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, miss-

ing watches, and we don't allow any agitation with the crew on this union business." Baldwin denied that he made that statement to Rosen but the record reveals that not only did Baldwin advise Rosen against indulging in union activities but that he also warned other members of the crew to the same effect.

36. Despite Baldwin's warning, Rosen did indulge in union activities and, in fact, was selected by the crew on several occasions to present their grievances to the captain. Although the captain refused to recognize Rosen as the crew's delegate, the grievances which he presented were rectified to the satisfaction of all. Rosen also started anew the holding of regular union meetings which were neglected prior to his coming on board.

37. Rosen testified that at no time during his employment on the S. S. California was his work ever adversely criticized by any official of the boat. In fact, the record shows that Rosen was highly praised, at times, for his seamanship.

38. The respondent maintained that Rosen voluntarily quit his position on September 18, 1937. Rosen disputes this contention and states that he was dismissed by Baldwin and when he inquired of the first mate the reason for his dismissal, he was informed, "Well, you know we don't want any agitating back there." The credible evidence shows that Rosen was dismissed because he failed to heed the warning given to him by Baldwin.

39. At the time of his dismissal, Rosen was earning \$80 per month besides his room and board. On January 10, 1938, he was rehired by the respondent and again assigned to S. S. Nevada. During the interim, between September 18, 1937 and January 10, 1938, Rosen had several temporary positions with the Gulf Company at a salary slightly higher than he received from the respondent.

40. Rosen testified that when he reported for duty on the last mentioned boat, he was cordially welcomed by the captain and by Carl Tranberg, the first mate. Both of these gentlemen denied that they greeted Rosen in any different way than they would have greeted any former member of the crew.

41. Rosen was employed on this boat until April 19, 1938, during which time the S. S. Nevada made a trip to Spain. He testified that during this employment he was given several special assignments which were not customarily given to able-bodied seamen. He also stated that on several occasions his work was praised by his superiors. Captain Swanson and Tranberg testified to the contrary and stated that his work was, on occasions, very poor. They also stated that he shirked his duties and would often leave his work for long periods of time to smoke a cigarette or a pipe.⁵ In spite of all the criticism, the captain and the first mate made of Rosen's work, he was retained by them

5. The uncontradicted evidence shows that Rosen does not smoke tobacco in any form.

for 3½ months, during which time the boat made numerous trips to and from Port Arthur.

42. The evident reason for Rosen's dismissal was his activities on behalf of the Union. When Rosen was previously aboard the S. S. Nevada, he did not engage in any union activities and his work was not subject to attack by the captain and the mate. However, the situation changed and when Rosen was on board the S. S. Nevada in 1938, then he was very active on behalf of the Union. He openly solicited members and he openly distributed union literature among members of the crew. He also presented grievances to the captain as a union delegate of the crew. He also drafted the letter (Board Exhibit No. 8) which was addressed, "An open letter to all Texas Co. Ships" and signed "Crew S. S. Nevada," wherein he sought to have all the respondent's ships manned by members of the Union. This letter was sent to the crew of every ship of the respondent. Moreover, the uncontradicted evidence shows that before Rosen boarded the S. S. Nevada on January 10, 1938, the crew did not hold regular union meetings. It was Rosen who again enforced the union's regulation regarding the holding of regular meetings.

43. Irrespective of what reason Tranberg gave Rosen when he dismissed him on April 19, 1938, the record is clear that Rosen was dismissed on that day for engaging in activities on behalf of the Union.

44. When Rosen was dismissed from the S. S. Nevada on April 19, 1938, he was earning \$85 per month besides receiving free room and board. He remained unemployed until June 1, 1938, when he was rehired by the respondent and assigned to the S. S. Washington. He remained aboard that boat until he was dismissed on July 14, 1938.

45. Rosen, soon after his arrival aboard the S. S. Washington, became the ship's union delegate. In that capacity he presented several grievances of the crew to the captain. Although the captain refused to recognize Rosen as a delegate, the complaints were satisfactorily adjusted. Rosen drafted and later signed the letter (Board Exhibit No. 9) which was circulated throughout the respondent's unlicensed personnel, and also sent to several officials of the respondent. This letter severely criticized the respondent because it refused to improve the working conditions of the crew. Rosen also sent a telegram to Mr. J. P. Roney, the respondent's general marine manager of the marine department, complaining that the captain of the S. S. Washington refused to recognize the union delegates aboard the boat. Rosen also presided over the union meetings which were regularly held aboard the S. S. Washington. His union activities were not kept a secret from the officials of the boat. Those officials knew he was the ship's union delegate and the person most interested in demanding the rights to which the unlicensed members of the crew believed they were entitled.

46. Mr. C. B. Johannesen, the first mate of the S. S. Washington, testified that Rosen was dismissed on account of his poor seamanship and shirking the duties which were assigned to him. However, the record belies Johannesen's testimony. Rosen's union activities were the only cause for his dismissal.

47. At the time of his dismissal, Rosen was earning \$85 per month besides receiving free room and board. Since his dismissal he has had several temporary positions aboard tankers owned by other oil companies. Rosen testified that he desired to be reinstated by the respondent.

48. C. Buckless. Buckless testified that he had been a seaman for approximately 20 years. He was first employed by the respondent in 1925 as boatswain on the S. S. Virginia. However, he did not remain aboard that boat very long and was not in the respondent's employ again until March 1936. At that time he was rehired and assigned to the S. S. Shenandoah as an able-bodied seaman. Between May 1, 1936, when he voluntarily left the S. S. Shenandoah, and November 17, 1937, when he was assigned to the S. S. Nevada, Buckless was intermittently in the respondent's employ.

49. On June 7, 1937, Buckless became a member of the Union and was very active on its behalf. Prior to that time, he was a member of the International Seamen's Union.

50. Soon after joining the crew of the S. S. Nevada, Buckless was promoted to boatswain and

retained that position until he was dismissed by the respondent on April 18, 1938. Even though he was boatswain, Buckless did not neglect his union activities. He presided over the union meetings and was selected delegate of the deck department. In that capacity he, on numerous occasions, presented complaints of the members of the crew to the captain and first mates.

51. Captain Swanson testified that he dismissed Buckless on April 18, 1938, "on account of his drunkenness and bringing liquor on board the ship." Buckless admitted that on numerous occasions he drank intoxicating liquor but swore that he was never intoxicated while aboard the boat. He also swore that at no time was he unable to perform his duties properly.

52. The respondent called several witnesses who testified that on several occasions Buckless was so intoxicated that he could not perform his duties at all. However, all these witnesses, including Captain Swanson and first mate Tranberg, admitted that unlicensed seamen are never discharged for intoxication.

53. The uncontradicted evidence shows that while in one of the ports in Spain, Captain Swanson confiscated several bottles of liquor belonging to Buckless and that on the trip back to the United States the captain gave the liquor back to Buckless. The uncontradicted evidence also shows that other members of the crew, including an officer, came

aboard the boat on several occasions under the influence of liquor. Neither Swanson or Tranberg could remember a single incident when either of them dismissed an unlicensed seamen for being intoxicated.

54. Buckless' union activities first came to the attention of the officers' attention when he presented grievances on behalf of the crew. He testified that at no time would either the captain or the mate recognize him as a union delegate. This they admit. All the complaints, however, were adjusted satisfactorily except one. That complaint was in reference to certain overtime to which the crew thought they were entitled. When Captain Swanson informed Buckless that he was without authority to grant his request, the uncontradicted evidence shows that Buckless was instructed at a union meeting to send a telegram to Mr. Roney demanding the payment of the overtime. Within a short time after the telegram was sent, Buckless was dismissed.

55. It is significant to note at this point that the day following Buckless' dismissal, Rosen was dismissed.

56. The evidence adduced at the hearing leads to the inescapable conclusion that Buckless was dismissed by the respondent on April 18, 1938, for union activities.

57. At the time of his dismissal, Buckless was earning \$100 per month, plus room and board. Until he was rehired by the respondent on June 2, 1938, he was without employment.

58. On June 2, 1938, Buckless was rehired by the respondent as quartermaster aboard the S. S. Washington.

59. While aboard this boat, Buckless continued his union activities with the aid of Rosen, who was also rehired by the respondent at this time as an able-bodied seaman.

60. Although Buckless' work was never criticized adversely while he was aboard the S. S. Washington in 1937, the captain and several mates of the S. S. Washington took the stand and testified about Buckless' poor helmsmanship. They said that Buckless was, at times, 10 degrees off his course. Despite the fact that he was a poor helmsman, his services were retained by the respondent for approximately 6 weeks.

61. The respondent contended that the habitual intoxication of Buckless and his poor helmsmanship was the cause of his dismissal from the S. S. Washington on July 14, 1938.

62. It is to be noted that Buckless was quartermaster aboard the S. S. Washington from February 2, 1937 to March 8, 1937, and at that time neither Captain Bergman nor Johannesen found fault with his helmsmanship or with his drinking. Surely, if Buckless was a habitual drinker, as the respondent tried to show at the hearing, it would not have re-employed him as a quartermaster on June 2, 1938. The evidence is clear that when Buckless was aboard the S. S. Washington in 1937 he did not

engage in any union activities and, therefore, the respondent found no fault with his helmsmanship.

63. Buckless was dismissed from the S. S. Washington on July 14, 1938, for engaging in activities on behalf of the Union. No other conclusion could possibly be arrived at from the evidence adduced at the hearing.

64. At the time of his dismissal, Buckless was earning \$87.50 per month, plus his room and board. Since his dismissal he has had several temporary positions. He desires to be reinstated by the respondent.

65. James P. Blasingame. Blasingame was first employed by the respondent aboard the S. S. Virginia on July 15, 1931 as an able-bodied seaman. He was employed on other boats of the respondent over a period of approximately 6 years.

66. On June 30, 1937, Blasingame was engaged as quartermaster aboard the S. S. California and retained that position until September 19, 1937. The Board contended that on the last-mentioned date, Blasingame was dismissed for union activities. The respondent denies this contention and maintained that Blasingame resigned his position at that time.

67. Sometime in 1934, Blasingame became a member of the International Seamen's Union. After the strike in 1936 and until the fall of 1937, he was a "pledged" member of the Union. Fearing the loss of his job if the officers of the S. S. California

knew of his union affiliations, he endeavored to keep it a secret. He contended at the hearing that shortly after the officers of the boat knew of his union affiliations, he was dismissed.

68. Blasingame testified that he was on the same watch with second mate Baldwin, that is, the watch from 12 to 4 o'clock. He then stated that on numerous occasions during the 12 to 4 o'clock morning watch, Baldwin spoke to him about the Union. He testified that on one occasion the following took place:

"A. Well, he was doing all the discussion, about how he ran that ship, and how they had been running it without having any union men aboard, and about a man that had been on there that had belonged to the union, and got rid of him.

Q. Did he say that?

A. Yes, sir. He mentioned one name, a man I knew, a man by the name of Charlie Horton. He told me he had to get rid of him because he was agitating union all the time.

Q. He said——

A. He said he had to get rid of him because he was agitating union all the time. He asked me what union I belonged to, and I told him I was not discussing unions."

69. He further testified that on another occasion Baldwin said to him that "he belonged to some union out on the west coast, and he got gyped out

of about \$50.00 and he never did get nothing out of it, and he ain't never had any use for a union since."

70. Baldwin, while admitting that he engaged in lengthy conversations with Blasingame, denied making the above quoted and other statements which Blasingame attributed to him. This denial, however, is not in accordance with the evidence as adduced at the hearing. Baldwin had an antipathy for any union among the unlicensed personnel and he was determined to prevent the unionization of the members of the crew of the S. S. California.

71. As soon as Baldwin became apprised of Blasingame's activities, his friendship for the quartermaster waned and the latter was given extra duty to perform without receiving extra compensation therefor.

72. In order to substantiate its contention that Blasingame was not dismissed but that he resigned voluntarily, the respondent called as a witness, Mr. O. D. Mitchell, a former quartermaster of the S. S. California and a bunk mate of Blasingame. He testified as follows regarding a conversation he had with Blasingame on September 19, 1937:

"Q. Did you have a conversation with him (Blasingame) at the time he left?

A. Well, I went into our quarters there and he was packing up and I was asking him why he was getting off or what he was doing packing up and he just told me he was getting off; that he didn't like the ship.

Q. Did he say he was fired?

A. No, sir. I was a bit surprised to see him packing up because I knew that he had said on the trip going north how much more money he had to have and I knew that he didn't have that much at the time.

Q. Did you ask him whether he was leaving of his own accord or whether he was fired?

A. I asked him why he was getting off. I knew that he had no reason to be packing up unless he wanted to get off himself. I couldn't understand why he all of a sudden was packing up. He hadn't said anything about it before."

73. However, Blasingame testified that he did not leave the boat on his own volition but that he was dismissed. He stated that soon after he and Rosen conferred as union delegates with the captain of S. S. California regarding certain overtime to which the members of the crew thought they were entitled, he was dismissed by Baldwin with this statement: "You can't ride this ship any more. Go ride one of your rank and file ships." Baldwin denied making this statement but his copious denials make his testimony unworthy of belief.

74. The record is clear that Blasingame was dismissed by the respondent September 19, 1937, for engaging in union activities. Since his dismissal Blasingame has had several temporary positions. He desires to be reinstated by the respondent.

75. A. P. Lortie. Lortie has been an able-bodied seaman for upwards of 20 years. He was first employed by the respondent on May 11, 1938, and was assigned as an able-bodied seaman to the S. S. Roanoke.

76. Lortie testified that when he first reported for duty aboard S. S. Roanoke, Mr. Edgar F. Carpenter, the first mate, and he had the following conversation:

“I said, ‘You are the chief mate?’

He said, ‘Yes.’

He said, ‘You are the new A. B.?’

I said, ‘Yes, sir.’

He said, ‘Do you belong to any union?’

I said, ‘Yes, sir. I belong to the N. M. U. Does that make any difference?’

‘Well,’ he said, ‘I will tell you,’ he said, ‘We don’t want any discontent in the crew on account of any union, because,’ he said, ‘we don’t recognize any union.’

‘Well,’ I said, ‘You shall not have it.’ ”

77. As soon as Lortie boarded the boat he became very active on behalf of the Union. He insisted that regular union meetings be held, which had not been done in the past. He openly solicited membership for the Union. He insisted that the minutes of the union meetings be signed by him as chairman of the meeting and by the secretary. He personally posted copies of the minutes on the bulkhead in the petty officers’ mess room. He did not keep his

union activities a secret, which was, without doubt, the reason why he was dismissed by the respondent on July 30, 1938.

78. However, the respondent maintained that Lortie was dismissed because "he was drunk and disorderly."

79. The respondent called several witnesses to substantiate its contention that Lortie boarded the vessel at Charleston, South Carolina, under the influence of liquor. However, Captain Gilbert and Mr. Carpenter testified that the main reason he was dismissed was on account of an altercation which Lortie had engaged in, aboard boat, with a mess boy in Charleston on that day.

80. The credible evidence shows that Lortie and the other union members wanted the three new members of the crew, who boarded the boat at Port Arthur, to join the Union. Two of them flatly refused the invitation and left the boat when it docked at Charleston. Howard Roberie, the mess boy, testified that although he wanted to join the Union the crew would not permit him to do so. He also left the boat at Charleston.

81. Lortie does not deny that he had several drinks of beer while in Charleston but swore that he did not return to the boat under the influence of liquor. Neither does he deny asking the three new members of the crew to join the Union but he does deny that he ever threatened them with bodily harm or otherwise. The testimony clearly

shows that all the union members aboard the boat made overtures to these three to join the Union. However, Lortie was the leader of the Union aboard ship and his dismissal was imperative in order to frustrate the union's organizational plans.

82. Lortie further testified that when he was dismissed the captain said to him: "You are being discharged for being drunk and disorderly and threatening men back there to join the union."

83. Captain Gilbert denied that he made that statement and stated that he dismissed Lortie "for being intoxicated and disorderly in Charleston." The evidence is clear that the respondent does not dismiss the unlicensed seamen for intoxication. In fact, Gilbert admitted that he gave whiskey to some members of the crew from time to time while aboard ship. He also admitted giving beer to Lortie but could not remember giving whiskey to him.

84. The record is clear that Lortie was discharged for union activities and for no other reason.

85. At the time of his dismissal, Lortie was earning \$85 per month, plus board and room. He is now employed but wishes to be reinstated by the respondent.

86. F. W. Zinkiewicz. Zinkiewicz did not appear at the hearing. The evidence which was adduced at the hearing shows that he indulged in union activities. However, there is no evidence at all that he was dismissed "for the reason that" he "joined and/or join a labor organization". The evidence clearly shows that the respondent dis-

missed Zinkiewycz for good and sufficient cause.

87. Rufus H. Andrews. Andrews was first employed by the respondent on March 25, 1938, as an able-bodied seaman. He was assigned to the S. S. Australia. He joined the Union in March 1938.

88. The Board contended that Andrews was dismissed because he engaged in union activities aboard the S. S. Australia. However, the record is clear that he engaged in little, if any, union activities during his short stay aboard the S. S. Australia. It is true that he was delegated by the members of the crew to confer with the captain about a certain grievance which the crew had about coffee. But the Union was not involved in that controversy. The record shows that it was but a grievance which Andrews concocted and which he foisted upon the other members of the crew.

89. Andrews was dismissed for good and just cause.

90. The respondent contended that the shipping articles which the members of the crew are required by law⁶ to sign at the beginning of each voyage is a contract of hire. Therefore, the respondent argues, the members of the crew are not employees within the meaning of the Act. This contention is untenable for the following reasons: (1) the respondent did not make it a practice to terminate the employment at the end of each trip;⁷ (2) all

6. 46 U. S. C. A. Sec. 564 et seq.

7. See *Black Diamond S. S. Corp. v. National Labor Relations Board*, 94 Fed. (2) 875. Cert. denied. 58 S. Ct. 1044.

members of the crew did not sign the articles on the same day; (3) from time to time when new members of the crew were added, they signed the articles as of the dates they entered service; (4) by departing on a subsequent trip, the original articles were automatically renewed; and (5) the working rules of the respondent (Respondent Exhibit No. 12) provide: "All unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay. Those in continuous service two years or more shall be given an annual vacation of two weeks with pay."⁸

91. By the discharge and refusal to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

92. By the said discharge and refusal to employ the said J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America.

IV. Interstate Commerce

93. The respondent is engaged in the manufacture and distribution of gasoline and other petroleum products. The great bulk of the crude oil which is used for the manufacture of petroleum is

8. Showing that it is the respondent's custom to renew the articles automatically.

transported into the State of Texas from the State of New Mexico via a pipe line. Seventy-five per cent of the finished product is shipped out of the State of Texas by means of seagoing tankers designated to points throughout the United States and foreign countries.

94. The activities of the respondent, set forth in Sections I and III above, occurring in connection with the operations of respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. The respondent, by discharging and refusing to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, and thus discouraging membership in a labor organization known as the National Maritime Union of America, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8(1) and Section 2(6) and (7) of the National Labor Relations Act.

2. The respondent, by discharging and refusing to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8(3) and Section 2(6) and (7) of the National Labor Relations Act.

3. The respondent, by discharging and refusing to employ F. W. Zinkiewicz and Rufus H. Andrews, as set forth in the above findings of fact, has not engaged in an unfair labor practice within the meaning of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. The respondent cease and desist from interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join or assist the National Maritime Union of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. The respondent cease and desist from discouraging membership in the National Maritime Union of America, or any other labor organization, by discriminating in regard to hire or tenure of employment or condition of employment as hereinabove more fully set forth.

3. In order to effectuate the policies of the Act, the respondent take the following affirmative action:

(a) Offer to J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole the said J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages or salary during the periods from September 18, 1937 to January 10, 1938, and from April 9, 1938 to June 1, 1938, and from July 14, 1938 to the date of offer of reinstatement, less any amount he may have earned during such periods;

(c) Make whole the said C. Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages or salary during the periods from April 18, 1938 to June 2, 1938, and from July 14, 1938 to the date of offer of reinstatement, less any amount he may have earned during such periods;

(d) Make whole the said James P. Blasingame and A. P. Lortie for any losses of pay they may have suffered by reason of the respondent's discrimination in regard to their hire or tenure of employment, by payment to each of them of a sum of money equal to that which he would have earned as wages or salary during the period from the date

of such discrimination to the date of offer of reinstatement, less any amount he may have earned during such period;

(e) Post immediately in conspicuous places at its place of business at Port Arthur, Texas, and maintain for a period of at least sixty (60) consecutive days, notices to its employees, stating that the respondent will cease and desist in the manner aforesaid; and

(f) File with the Regional Director for the Sixteenth Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is recommended that the complaint be dismissed as to F. W. Zinkiewicz and Rufus H. Andrews.

Request for the privilege of filing briefs with or presenting oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on any other issues upon which it is desired to file a brief or present oral argument must be made to the Board, Shoreham Building, Washington, D. C., within ten (10) days from the receipt of this Intermediate Report.

HOWARD MYERS

Trial Examiner

Dated: May 1, 1939

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS OF RESPONDENT, THE TEXAS COMPANY, TO THE INTERMEDIATE REPORT OF THE TRIAL EXAMINER, AND TO THE RECORD.

The Texas Company, respondent in the above-entitled proceeding, hereby takes exception to the Intermediate Report, dated May 1, 1939, filed by Howard Myers, Trial Examiner, and to certain portions of the record herein, including exceptions to rulings of the Trial Examiner upon motions and objections to evidence, as follows:

I.

Respondent excepts to the Trial Examiner's denial of the following motions:

1. Respondent's motion to dismiss the complaint made at the close of the Board's case on the ground no cause of action was alleged or proved (R. 1969-1971).

2. Respondent's motion to dismiss the complaint made at the close of the entire case on the ground no cause of action was alleged or proved (R. 2281, 2282; Intermediate Report, p. 3).

3. Respondent's motion to strike out the testimony of Board's witness Lortie relative to a conversation he had with an ordinary seaman outside a beer saloon in North Charleston, South Carolina, on the ground such evidence was hearsay and did not take place in the presence of an officer of Respondent's vessel (R. 932-934).

4. Respondent's motion to strike out the testimony of Board's witness Ames relative to difficulties in securing passes to board Respondent's vessels, on the ground he did not personally contact representatives of Respondent (R. 68, 69).

5. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen that seaman Leslie Thompson told him (Rosen) that "The mate told me you are fired", as well as other conversations between Thompson and Rosen respecting the reasons for Rosen leaving the S/S California, on the ground such conversations did not take place in the presence of an officer of the vessel (R. 149, 150).

6. Respondent's motion to strike out the following testimony of Board's witness J. Gordon Rosen as to what seaman Alfred Wukasch said to him:

"Q. (By Mr. Martin) Can you explain that please? A. Yes, sir. I asked why the meeting had not been held on the ship. Alfred Wukasch told me that when they held a meeting and elected delegates, the delegates got fired; and, therefore, they didn't think there was much reason to have meetings.

Mr. Williams: I move to strike that testimony for the same reason.

Trial Examiner Myers: Denied.

Mr. Williams: Exception" (R. 200).

7. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen respect-

ing telegrams and a letter sent by members of the crew of the S/S Washington to the New York Office of Respondent, on the ground there is no evidence that such telegrams and letter were ever received by Respondent (R. 221, 222).

8. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen respecting the rules and practice of the Seamen's Church Institute in regard to the hiring of seamen, on the ground such evidence was irrelevant and immaterial (R. 244, 245).

9. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen as to talks he had with the captains of Respondent's vessels as a representative of the seamen on such vessels, on the ground such evidence was immaterial and irrelevant in view of the admission by Union's counsel that Rosen had no authority to bind the National Maritime Union (R. 304, 306).

10. Respondent's motion to strike out the following testimony of Board's witness George Hart:

"Q. (By Mr. Wright) Now, Mr. Hart, to whom did he refer about having gotten rid of him yesterday? A. I suppose he meant Buckless. He had fired Buckless yesterday.

Q. Had he gotten rid of anybody else besides Buckless the day before? A. Yes, an ordinary seaman, but I don't know what his name was; a rather peculiar name.

Mr. Van Dusen: Mr. Examiner, I move that the answer, 'I suppose he meant Buckless,' be

stricken, since he now says there were two men, and he can't tell which it was" (R. 459).

11. Respondent's motion to strike out the following testimony of Board's witness Blasingame:

"Q. Did you hear that conversation which the engineer also heard? A. I heard parts of it.

Q. You heard parts of it? A. Yes.

Q. Was that about the benefits of the union? A. Well, they were talking—the second pumpman was talking to the chief pumpman.

Q. Yes. A. Wanted to know when and why he didn't join the N. M. U. or some union.

Trial Examiner Myers: Why who didn't join the union; the N. M. U. or some union?

A. The chief pumpman. His name is Dempsey.

Mr. Williams: In order to preserve our exception we move to strike the testimony of this witness in that particular for the reason that it is not shown that the conversation occurred in the presence of any officer of the vessel" (R. 511-514).

12. Respondent's motion to strike out the following testimony of Board's witness Blasingame:

"Q. (By Mr. Martin) Now, in these conversations after the one where you denied that you were a union man, in those conversations afterwards, do you believe that Mate Baldwin knew that you were a union man? A. We went

up and had the conversation with the captain, he knew it then.

Trial Examiner Myers: That was the first time he knew it, is that right?

Q. (By Mr. Martin) You believe that was the first time he knew it? A. Was sure of it. He might have been suspicious.

Mr. Van Dusen: I move to strike it. He is asking whether he knows that someone else believes.

Trial Examiner Myers: Motion denied. It is in now. Let's have no more of it.

Mr. Van Dusen: Exception'' (R. 595).

13. Respondent's motion to strike out the following testimony of Board's witness Buckless:

“Q. Did you see any members of the crew on the way? A. Yes. I seen several of them and told them of my downfall. Well, they wanted to set the ship down.

Q. Did they seem excited about it? A. Yes, they did.

Q. About the fact that you had been discharged? A. Yes, sir. Well, I told them that I thought that it would be better if they stayed aboard the ship and not say anything and I would file my case with the National Labor Board as I was fired for nothing but union activities as far as I could see; they knew that I was delegate on that ship and there had been

rumors around before that I was getting short on there.

Mr. Van Dusen: I move to strike it out as not responsive and as not made in the presence of an officer of the ship.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception'' (R. 668).

14. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen describing meetings of ships' crews and conversations he had with the Masters and other officers of the S/S Nevada and the S/S Washington, on the ground such conversations are hearsay and that the notes from which Rosen read were not used to refresh his recollection (R. 1953, 1954; Intermediate Report p. 2).

15. Respondent's motion to strike out the testimony of all witnesses for the Board relative to conversations between Board's witnesses and the Masters or officers of Respondent's vessels or any officer or agent of Respondent in respect to labor union matters or labor union activities (R. 2270; Intermediate Report p. 2).

16. Respondent's motion to strike out the following testimony of Board's witness Buckless as to conversations he had with Chief Engineer Dilbert:

“Q. Did he say anything about your getting fired or as to why you got fired from the ‘Nevada’?

Trial Examiner Myers: Give us the substance of the conversation. Of course you can't remember the exact words.

A. No. Well, as we were talking, he says 'What did you get fired for?'

And I says 'I was delegate on that ship, and fired for union activities. And that afternoon or evening, Gordon Rosen was elected delegate, and the following day he got fired, so it was nothing more than union activities that I could see that we were fired for.'

Q. (By Mr. Williams) That was your opinion? A. No, we were talking.

Q. That is the opinion you expressed to Dilbert? A. It was the only thing.

Q. Was that the opinion you expressed to Dilbert? A. Yes.

Mr. Williams: Then I move it be stricken.

Trial Examiner Myers: No, he is repeating the conversation he had with the chief engineer. I will deny the motion" (R. 698).

17. Respondent's motion to strike out the testimony of Board's witness Buckless relative to obtaining employment on Respondent's vessels through the Seamen's Church Institute (R. 876, 878, 879).

18. Respondent's motion to strike out the following testimony of Board's witness J. Gordon Rosen:

“Trial Examiner Myers: Have you any reason to believe that Dave knew that you were a member of the union?”

A. Yes, sir, I do believe he knows that I am a member of the union, because when I left the SS ‘California’ and I went on the SS ‘Gulfbell’ and the SS ‘Gulfgem’ and I left that ship just before Christmas last year, Dave wanted to see my discharges before he would register me and he knows that the Gulf ships are N. M. U. ships; were at that time; and I showed him my discharges from the Gulf Company.

Mr. Van Dusen: Well, I move to strike it out as not responsive. The discharge slip would be the best evidence of that, as to whether it shows that he is an N. M. U. man.

Trial Examined Myers: Motion denied.

Mr. Van Dusen: Exception” (R. 417, 418).

II.

Respondent excepts to the following rulings on evidence made by the Trial Examiner:

19. Overruling of Respondent’s objection to testimony of Board’s witness J. Gordon Rosen as to what seaman Leslie Thompson told him about Rosen having been “fired”, on the ground such evidence did not take place in the presence of an officer of Respondent’s vessel (R. 149; 150).

20. Overruling of Respondent’s objection to the testimony of Board’s witness J. Gordon Rosen as

to what seaman Wukasch said to him regarding union meetings on the S/S Washington and the "firing" of union delegates, on the ground such evidence was hearsay and did not take place in the presence of any officer of Respondent's vessel (R. 200).

21. Overruling of Respondent's objection to testimony of Board's witness Buckless as to what was said in the presence of Chief Engineer Dilbert, on the ground such evidence was hearsay and did not take place in the presence of an officer of Respondent's vessel (R. 204; 207).

22. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to what seaman Zinkiewycz told him regarding Rosen having been "fired", on the ground such evidence did not take place in the presence of an officer of Respondent's vessel (R. 210).

23. Overruling of Respondent's objection to the admission in evidence of telegrams alleged to have been sent to Respondent by the crew of the S/S Washington, on the ground there was no proof such telegrams were ever received by Respondent (R. 222).

24. Overruling of Respondent's objection to the admission in evidence of testimony as to the rules and practice of Seamen's Institute in regard to the hiring of seamen, on the ground such evidence was irrelevant and immaterial (R. 244, 245).

25. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness J.

Gordon Rosen regarding his authority to bargain as a representative of the Union (R. 299).

26. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to his union affiliations (R. 541).

27. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to when he filed his complaint against Respondent with the Labor Board (R. 563).

28. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to why he delayed filing his complaint against Respondent until June, 1938 (R. 569).

29. Overruling of Respondent's objection to testimony of Board's witness Blasingame regarding the policy of the Union in respect to the hiring of seamen through places like "Mrs. Mitchal's" (R. 616).

30. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Buckless as to the real reason for his wanting to get on Respondent's vessels (R. 853).

31. Overruling of Respondent's objection to questioning by Board's counsel of Respondent's witness Swanson as to whether a certificate of discharge must be signed in the presence of the Master of the vessel, on the ground such questioning called for a legal conclusion (R. 1674-1676).

32. Overruling of Respondent's objection to testimony by Respondent's witness Hopper as to how he could tell whether a man is a habitual drunkard (R. 1734).

33. Overruling of Respondent's objection to questioning by Board's counsel of Respondent's witness Gilbert as to the legal effect of a discharge certificate (R. 1863, 1864).

34. Overruling of Respondent's objection to the following testimony of Board's witness J. Gordon Rosen respecting conversations between seamen Blasingame, Myers and Vest and other members of the crew:

“Q. Did you hear any conversations between James Blasingame and any officer of the Company on deck?

A. Not of any officer of the Company. I saw James Blasingame talking to the mate and later on he went back in the forecastle and the members of the deck crew were assembled there and James Blasingame asked us——

Mr. Van Dusen: Just a minute. I object, because this is not in the presence of any officer of the ship. It is hearsay; not binding on the respondent. He said James Blasingame went back and talked to the members of the crew.

Trial Examiner Myers: I overrule the objection.

Mr. Van Dusen. Take an exception.

A. (Continuing) James Blasingame said, 'Did that mate say anything to you fellows when you came aboard the ship?' Another fellow by the name of Meyers——

Mr. Van Dusen: The same objection to what Meyers said.

Trial Examiner Myers: Overruled.

A. (Continuing) He said, 'Yes, the mate said something to me.'

And Blasingame said, 'The mate told me that he wouldn't stand for any drunkenness on this ship, missing watches, and any agitating the crew on union matters.'

Myers said, 'He told me the same thing,' and another A.B. by the name of Vest said, 'The mate told me the same thing.'

Mr. Van Dusen: I object to that. It is the same thing.

Trial Examiner Myers: I understand that you have an objection to this whole line of testimony.

Mr. Van Dusen: Thank you.

Trial Examiner Myers: I overrule the objection and ask the reporter to please note an exception to my ruling" (R. 131, 132).

35. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to what seaman Smith said to another seaman respecting the attitude of the union toward Mate Baldwin, on the ground such testimony was hearsay and did

not take place in the presence of any officer of Respondent's vessel (R. 139).

36. Overruling of Respondent's objection to the admission in evidence of Board's Exhibit "8", which is a circular letter written by Board's witness J. Gordon Rosen as a member of the crew of the S/S Nevada to crews of other vessels of Respondent, on the ground there was no proof of knowledge of such letter on the part of Respondent and that it is irrelevant and immaterial (R. 183-185).

37. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to conversations between Rosen and other members of the crew relative to union activities, on the ground such evidence was hearsay and did not take place in the presence of officers of Respondent's vessels (R. 203, 204, 207, 208, 216, 221).

38. Overruling of Respondent's objection to the admission in evidence of Board's Exhibit "9", which is an open letter sent by the crew of the S/S Washington to crews on other vessels of Respondent's vessels, on the ground there was no proof of knowledge of such letter on the part of Respondent and that it is irrelevant and immaterial (R. 238, 240).

39. Sustaining of Board's objection to the questioning by Respondent's counsel of Board's witness J. Gordon Rosen relative to his authority to represent the union in bargaining matters (R. 295-299).

40. Overruling of Respondent's objection to the question asked Board's witness J. Gordon Rosen as to whether he (Rosen) had "any reason to believe that Dave knew that you were a member of the union" (R. 417, 418).

41. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to whether he told the union he wished to file a complaint against Respondent at the time he went to the Union Hall for his membership book (R. 563).

42. Sustaining of Board's objection to the following question asked Board's witness Blasingame by Respondent's counsel:

"Q. Now, isn't it a fact, Mr. Blasingame, that the reason you filed your complaint personally with the Labor Board was because you were unemployed at the time?" (R. 569).

43. Overruling of Respondent's objection to the following question asked of Board's witness Blasingame:

"Q. (By Mr. Martin) Mr. Blasingame, do you know what the union thinks of places like Mrs. Mitchal's?" (R. 615, 617).

44. Overruling of Respondent's objection to testimony of Board's witness Buckless as to what the first pumpman on the S/S Washington said to him about a conversation with Chief Engineer Dilbert, on the ground such evidence was hearsay and did not take place in the presence of any officer of Respondent's vessel (R. 645).

45. Sustaining of Board's objection to questioning by Respondent's counsel of Respondent's witness Carr as to the circumstances surrounding Buckless' court martial while in the U. S. Navy and his subsequent dishonorable discharge (R. 2095 to 2098, 2104, 2106, 2107).

III.

Respondent excepts to each of the following findings of fact in the Intermediate Report of the Trial Examiner:

46. The finding in the first paragraph on page 4 of the Intermediate Report, under the caption "The Issues Involved", that:

"It is also the contention of the Board (1) that the captains, mates and other officers of the several hereinabove-mentioned boats, made disparaging remarks to the respondent's employees from time to time regarding the Union; (2) that these remarks were made for the sole purpose of discouraging membership in the said Union; and (3) that the respondent discriminated against the Union when hiring unlicensed seamen."

47. The finding in paragraph numbered "18" that:

"Because it was, and it still is, the respondent's policy to refuse permission to a delegate or a representative of any labor organization to board its boats in order to conduct organizational activities, the union could only obtain

new members by having its members solicit membership and by having its members distribute union literature aboard the respondent's boats."

48. The finding in paragraph numbered "19" that:

"The record is clear that on account of the respondent's said policy, the Union has been handicapped in its efforts to obtain new members. Moreover, because of the respondent's antipathy toward labor unions among its unlicensed personnel, at least four union members were discharged for union activities."

49. The finding in paragraph numbered "20" that:

"The four union members who were discharged by the respondent for union activities, as will be more fully related below, were members of the crew of the S.S. Washington, S.S. Nevada, S.S. California, and the S.S. Roanoke. The captains, mates and others who were in the respondent's employ in a supervisory capacity aboard the aforementioned boats were openly and outspokenly adverse to any union activities aboard the boats. The statements which were attributed to them by the Board's witnesses clearly show that they intended to allow no union to get a foothold upon their boats."

50. The finding in paragraph numbered "21" that prior to the arrival of Buckless, Rosen and

Zinkiewicz no union meetings were held aboard the S/S Washington.

51. The finding in paragraph numbered "22" that:

"Union activities aboard the S.S. Roanoke were at a standstill until the advent of Lortie. His stay aboard the boat was likewise short-lived. The details of his dismissal are also set forth below."

52. The finding in paragraph numbered "23" that:

"Rosen's arrival aboard the S.S. Nevada and the S.S. California brought new life to the Union and under his leadership regular union meetings were again started. As soon as Rosen's and Blasingame's activities and affiliations on behalf of the Union became known to the captain and the mates of the S.S. California, the services of both Rosen and Blasingame were soon dispensed with by the respondent."

53. The finding in paragraph numbered "24" that:

"In order to frustrate the union's plans to organize the unlicensed personnel aboard the respondent's boats, the captains and the mates of the S.S. Washington, S.S. Nevada, S.S. California and S.S. Roanoke made many disparaging remarks about the Union to the members of the crew."

54. The finding in paragraph numbered "25" that:

"The Board's witnesses attributed many other similar remarks to the officers of the various respondent's ships, most of which remarks were denied by them. It is highly improbable that all the Board's witnesses were not telling the truth. The undersigned finds that the statements attributed to the said captains and mates were made by them and were made for the sole purpose of discouraging membership in the Union."

55. The finding in paragraph numbered "26" that several of the "dismissed" employees, when they arrived on their respective vessels for the first time, "were warned at that time by the officials of the boat that no union activities would be permitted aboard the boat."

56. The finding in paragraph numbered "27" that:

"By the activities hereinabove described, the respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act."

57. The finding in paragraph numbered "28" that:

"By the said activities, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America."

58. The finding in paragraph numbered "31" that J. Gordon Rosen became active in union matters in the Spring of 1937 and that at that time he "openly circulated union literature and openly solicited members."

59. The finding in paragraph numbered "35" that the record reveals, that "not only did Baldwin advise Rosen against indulging in union activities but that he also warned other members of the crew to the same effect."

60. The findings in paragraph numbered "36" that:

(1) "Rosen indulged in union activities and, in fact, was selected by the crew on several occasions to present their grievances to the Captain"

(2) "the Captain refused to recognize Rosen as the crew's delegate"

(3) "Rosen also started anew the holding of regular union meetings which were neglected prior to his coming on board."

61. The finding in paragraph numbered "37" that "In fact, the record shows that Rosen was highly praised, at times, for his seamanship."

62. The finding in paragraph numbered "38" that:

"The credible evidence shows that Rosen was dismissed because he failed to heed the warning given to him by Baldwin."

63. The finding in paragraph numbered "39" that between the period September 18, 1937 to Jan-

uary 10, 1938, the positions Rosen had with the Gulf Company were "temporary".

64. The finding in paragraph numbered "41" that "The uncontradicted evidence shows that Rosen does not smoke tobacco in any form."

65. The findings in paragraph numbered "42" that:

(1) "The evident reason for Rosen's dismissal was his activities on behalf of the Union."

(2) "He openly solicited members and he openly distributed union literature among members of the crew."

(3) "It was Rosen who again enforced the union's regulation regarding the holding of regular meetings."

66. The finding in paragraph numbered "43" that:

"Irrespective of what reason Tranberg gave Rosen when he dismissed him on April 19, 1938, the record is clear that Rosen was dismissed on that day for engaging in activities on behalf of the Union."

67. The findings in paragraph numbered "45" that:

(1) Board Exhibit No. 9 was "circulated throughout the respondent's unlicensed personnel, and also sent to several officials of the respondent."

(2) "Rosen sent a telegram to Mr. J. P. Roney, the respondent's general marine manager of the marine department, complaining that the Captain of the S. S. Washington refused to recognize the union delegates aboard the boat."

(3) Rosen's "union activities were not kept a secret from the officials of the boat. Those officials knew he was the ship's union delegate and the person most interested in demanding the rights to which the unlicensed members of the crew believed they were entitled."

68. The finding in paragraph numbered "46" that:

"However, the record belies Johannesen's testimony. Rosen's union activities were the only cause for his dismissal."

69. The finding in paragraph numbered "47" that since his dismissal the positions Rosen had aboard tankers owned by other oil companies were "temporary".

70. The finding in paragraph numbered "50" that Buckless presented complaints of the members of the crew to the Captain and first mates of the S/S Nevada on "numerous" occasions.

71. The finding in paragraph numbered "52" that:

"However, all these witnesses, including Captain Swanson and first mate Tranberg, admitted that unlicensed seamen are never discharged for intoxication."

72. The finding in paragraph numbered "53" that:

"The uncontradicted evidence also shows that other members of the crew, including an officer, came aboard the boat on several occasions under the influence of liquor. Neither Swanson or Tranberg could remember a single incident when either of them dismissed an unlicensed seaman for being intoxicated."

73. The finding in paragraph numbered "54" that the Captain and mate of the S/S Nevada admitted that they would at no time recognize Buckless as a union delegate.

74. The finding in paragraph numbered "56" that:

"The evidence adduced at the hearing leads to the inescapable conclusion that Buckless was dismissed by the respondent on April 18, 1938, for union activities."

75. The finding in paragraph numbered "60" that Buckless' services were retained by the respondent for approximately 6 months "despite the fact that he was a poor helmsman".

76. The finding in paragraph numbered "62" that:

"The evidence is clear that when Buckless was aboard the S.S. Washington in 1937 he did not engage in any union activities and, therefore, the respondent found no fault with his helmsmanship."

77. The finding in paragraph numbered "63" that:

"Buckless was dismissed from the S.S. Washington on July 14, 1938, for engaging in activities on behalf of the Union. No other conclusion could possibly be arrived at from the evidence adduced at the hearing."

78. The finding in paragraph numbered "64" that since his dismissal the several positions Buckless had were "temporary".

79. The finding in paragraph numbered "67" that Blasingame endeavored to keep his union affiliations a secret for fear of the loss of his job.

80. The finding in paragraph numbered "70" that Baldwin's denial of conversations with Blasingame is not "in accordance with the evidence as adduced at the hearing" and that "Baldwin had an antipathy for any union among the unlicensed personnel and he was determined to prevent the unionization of the members of the crew of the S.S. California."

81. The finding in paragraph numbered "71" that:

"As soon as Baldwin became apprised of Blasingame's activities, his friendship for the quartermaster waned and the latter was given extra duty to perform without receiving extra compensation therefor."

82. The finding in paragraph numbered "73" that:

"Baldwin denied making this statement but his copious denials make his testimony unworthy of belief."

83. The finding in paragraph numbered "74" that "the record is clear that Blasingame was dismissed by the respondent September 19, 1937, for engaging in union activities" and that since his "dismissal" the several positions Blasingame had were "temporary".

84. The finding in paragraph numbered "77" that Lortie "did not keep his union activities a secret, which was, without doubt, the reason why he was dismissed by the respondent on July 30, 1938."

85. The finding in paragraph numbered "80" that:

"Howard Roberie, the mess boy, testified that although he wanted to join the union the crew would not permit him to do so."

86. The finding in paragraph numbered "81" that:

"The testimony clearly shows that all the union members aboard the boat made overtures to these three to join the Union. However, Lortie was the leader of the Union aboard ship and his dismissal was imperative in order to frustrate the union's organizational plans."

87. The finding in paragraph numbered "83" that:

"The evidence is clear that the respondent does not dismiss the unlicensed seamen for intoxication."

88. The finding in paragraph numbered "84" that:

"The record is clear that Lortie was discharged for union activities and for no other reason."

89. The finding in paragraph numbered "90" that respondent's contention, that members of respondent's crews are not employees because of the signing of shipping articles, is untenable.

90. The finding in paragraph numbered "91" that:

"By the discharge and refusal to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

91. The finding in paragraph numbered "92" that:

"By the said discharge and refusal to employ the said J. Gordon Rosen, C. Buckless, James P. Blasingame, and A. P. Lortie, the respondent has discouraged membership in a

labor organization known as the National Maritime Union of America.”

92. The finding in paragraph numbered “94” that:

“The activities of the respondent, set forth in Sections I and III above, occurring in connection with the operations of respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.”

IV.

Respondent excepts to the failure of the Trial Examiner to include in the Intermediate Report each and all of the following findings of fact:

93. The Rosen, Buckless, Blasingame and Lortie all signed shipping articles as required by law and said shipping articles were contracts of hire extending for a specified period of time as provided for therein.

94. That the shipping articles signed by Rosen, Buckless, Blasingame and Lortie in each case expired by their terms on the respective dates said individuals contend they were dismissed from Respondent’s employ for union activities, and that, therefore, no basis exists for claims of unlawful discharge on the part of said individuals.

95. That J. Gordon Rosen was not dismissed

from Respondent's vessel, the S/S California, on September 19, 1937, but voluntarily quit said vessel.

96. That if J. Gordon Rosen was dismissed by Respondent from the S/S Nevada on April 19, 1938, and from the S/S Washington on July 14, 1938, his dismissals from said vessels were for incompetency and unwillingness to work, and not for union activities.

97. That after leaving the S/S California on September 18, 1937 and the S/S Washington on July 14, 1938, Rosen obtained other regular and substantially equivalent employment elsewhere.

98. That if Buckless was dismissed from the S/S Nevada on April 18, 1938, and from the S/S Washington on July 14, 1938, his dismissals from said vessels were primarily on account of habitual drunkenness, and not for union activities.

99. That after his dismissal from the S/S Washington on July 14, 1938, Buckless obtained other regular and substantially equivalent employment elsewhere.

100. That Blasingame was not dismissed from Respondent's vessel, the S/S California, on September 19, 1937, but voluntarily quit said vessel.

101. That after leaving the S/S California on September 18, 1937, Blasingame obtained other regular and substantially equivalent employment elsewhere.

102. That if Lortie was dismissed from the S/S Roanoke on July 30, 1938, his dismissal was for being drunk and disorderly, and not for union activities.

V.

103. Respondent excepts to each and every conclusion and recommendation contained in the Intermediate Report of the Trial Examiner under the caption "Conclusions and Recommendations", except the conclusions and recommendations in respect to F. W. Zinkiewicz and Rufus H. Andrews, all on the ground as being wholly unsupported by any evidence or any substantial evidence and contrary to law and the constitutional rights of this Respondent.

VI.

104. Respondent excepts to each and every conclusion of law and expression of opinion of the Trial Examiner embodied in and termed by the Examiner "Findings of Fact".

VII.

105. Respondent excepts to all other findings, conclusions, recommendations, and rulings on motions, on the introduction, offer, and exclusion of evidence, which were adverse to Respondent, and which were made by the Trial Examiner or the Board, and to which exception is not otherwise specifically taken herein.

Dated: New York, N. Y., June 13, 1939.

Respectfully submitted,

ALBERT E. VAN DUSEN,

Attorney for Respondent,

The Texas Company,

135 East 42nd Street,
New York, N. Y.

United States of America Before the National
Labor Relations Board

In the Matter of
THE TEXAS COMPANY, MARINE DIVISION¹
and
NATIONAL MARITIME UNION, PORT
ARTHUR BRANCH

Case No. C-1276

Decided January 24, 1940

Petroleum Products Distribution Industry—Interference, Restraint, and Coercion: anti-union statements by supervisory employees: warning employees against organization; threatening to discharge union members; questioning employee about membership in union; respondent's refusal to permit all persons not in its employ, including union representatives, to board its ships held not to be a violation of the Act—Discrimination: discharge and refusal to reinstate two employees found discriminatory; charges of discriminatory discharge and refusal to reinstate four other employees dismissed—Employee Status: termination of voyage as affecting—Reinstatement Ordered: one employee discriminatorily discharged and not reinstated—Back Pay: awarded to employees discriminated against, including reasonable value of board and maintenance.

¹As noted below, the complaint was issued against "The Texas Company" rather than "The Texas Company, Marine Division."

Mr. E. P. Davis and Mr. Alba Burnham Martin, for the Board.

Mr. A. E. Van Dusen, of New York City, Mr. James H. Pipkin, of Houston, Tex., and Mr. J. W. Williams, of Port Arthur, Tex., for the respondent.

Mandell & Combs, by Mr. Herman Wright, Mr. W. A. Combs, Mr. Arthur J. Mandell, and Mr. Otto Mullinax, of Houston, Tex., and Mr. Max Lustig, of New York City, for the Union.

Mr. Ben Law, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon amended charges duly filed by National Maritime Union of America,² Port Arthur Branch, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas) issued its complaint dated September 3, 1938, against The Texas Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint ac-

²This is the correct designation of the Union. As used herein, "Union" also refers to National Maritime Union, Port Arthur Branch, as the Union has previously been designated in this proceeding.

accompanied by notice of hearing was duly served upon the respondent and upon the Union.

In respect to the unfair labor practices the complaint alleged in substance that the respondent discharged and refused to reinstate 10 of its employees³ for the reason that they, and each of them, joined and/or assisted the Union and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection, thereby discriminating in regard to hire and tenure of employment of these employees and discouraging membership in the Union; that since on or about August 1, 1937, the respondent, through its officers, agents, and employees, has made various and sundry statements to its employees discouraging affiliation in or activity on behalf of the Union; that through its officers,

³The complaint listed the employees allegedly discharged, the dates of the alleged discharges, and the ships from which they took place, as follows: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. C. MacClennan, April 17, 1938, S. S. Rhode Island; C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewicz, July 14, 1938, S. S. Washington; C. Buckless, July 14, 1938, S. S. Washington; J. Gordon Rosen, July 14, 1938, S. S. Washington; James P. Blasingame, September 19, 1937, S. S. California; Arthur Spencer, September 19, 1937, S. S. California; J. Gordon Rosen, September 19, 1937, S. S. California; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke.

agents, and employees the respondent has denied passes to representatives of the Union to board the respondent's vessels in order to contact members of the Union; and that by the afore-mentioned and other acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On September 12, 1938, the respondent filed its answer and its amended answer to the complaint in which it denied that it had engaged in unfair labor practices, but admitted that certain of the employees named had been discharged and refused reinstatement.⁴ In its amended answer the respondent also admitted that it has denied passes to representatives of the Union to board its vessels, but averred that such denial had not in any way been discriminatory.

Pursuant to notice a hearing was held at Port Arthur, Texas, from September 12 to 16 and 19 to 22, 1938, before Howard Myers, the Trial Examiner duly designated by the Board. The hearing was

⁴The respondent admitted in its amended answer that it had on the dates given discharged the following employees from the following named ships: C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewycz, July 14, 1938, S. S. Rhode Island; J. Gordon Rosen, July 14, 1938, S. S. Washington; C. T. Adams, July 30, 1938, S. S. Roanoke; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. Buckless, July 14, 1938, S. S. Washington.

continued at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing, the Board moved to amend its complaint to include an allegation that the respondent discharged and refused to reinstate two men⁵ not previously named therein for the reason, among others, that they had joined and/or assisted the Union. The Trial Examiner granted the motion without opposition. With the consent of all parties the respondent's answer was deemed amended to include a denial of the charges that the said two men were discharged in violation of the Act. During the course of the hearing, the Board moved to dismiss the amended complaint as to particular alleged discharges of 7 of the 12 employees named.⁶ The Trial Examiner granted the motion

⁵The names of these employees, the dates of the alleged discharges, and the ships from which they took place are: Rufus H. Andrews, July 8, 1938, S. S. Australia; Jack Wilson, March 17, 1938, S. S. Washington.

⁶These seven discharges involved the following employees who were alleged to have been discharged on the following dates from the following ships: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. G. MacClennan, April 17, 1938, S. S.

which was not opposed. Also during the course of the hearing the respondent made various motions to dismiss the amended complaint in its entirety; it moved specially to dismiss that portion of the amended complaint which alleged that Rufus H. Andrews and F. W. Zinkiewicz were dismissed by the respondent on July 8, and July 14, 1938, respectively, because they had joined and/or assisted the Union; and it made various motions to strike certain testimony. Decision on these motions was reserved by the Trial Examiner at the hearing. In his Intermediate Report,⁷ discussed below, the Trial Examiner denied the motions to dismiss the amended complaint in its entirety and the motions to strike certain testimony, but granted the motions to dismiss the amended complaint as to Rufus H. Andrews and F. W. Zinkiewicz. At the close of the hearing the Board moved to conform the complaint to the proof. This motion was granted by the Trial Examiner. During the course of the hearing the Trial Examiners made other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiners and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Rhode Island; Arthur Spencer, September 19, 1937, S. S. California; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke; Jack Wilson, March 17, 1938, S. S. Washington.

⁷The Intermediate Report was submitted by Trial Examiner Howard Myers.

On May 8, 1938, Trial Examiner Myers filed an Intermediate Report finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices; that it reinstate with back pay 4 of the 12 employees originally named in the amended complaint; and that it take certain other action to remedy the situation brought about by the unfair labor practices. He dismissed the allegations of the complaint, as above stated, with respect to Rufus H. Andrews and F. W. Zinkiewicz. The respondent filed its request for oral argument before the Board upon the Intermediate Report and the record on May 12, 1939, its Statement of Exceptions to the Intermediate Report and to the record on July 14, 1939, and its Brief in support of the Statement of Exceptions on July 17, 1939.

Pursuant to notice duly served upon the respondent and upon the Union, a hearing for the purpose of oral argument was held on October 24, 1939, before the Board in Washington, D. C. The respondent and the Union were represented by counsel and participated in the argument.

The Board has considered the Exceptions filed by the respondent to the Intermediate Report of the Trial Examiner and to the record and, except in so far as the exceptions are consistent with the findings of fact, conclusions of law, and the Order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent, The Texas Company, a wholly owned subsidiary of The Texas Corporation, is a Delaware corporation, with its principal business and executive offices located at New York City and Houston, Texas. It is engaged chiefly in the production, distribution, and sale of petroleum products.

The respondent operates refineries in Texas at Galena Park, Port Arthur, and Port Neches. In addition, at Port Neches it operates a factory for the manufacture of roofing materials, barrels, and various other products.

Chief products of the Galena Park refinery are gasoline and fuel oils. The crude oil used in their manufacture comes principally from producing wells in Texas and New Mexico through pipe lines operated by the Texas New Mexico Pipe Line Company. This company is a common carrier with tariffs prescribed by the Interstate Commerce Commission. A majority of its stock is owned by The Texas Corporation. The average daily throughput of the Galena Park refinery is approximately 20,000 barrels of crude oil. Of the finished products, approximately 75 per cent are shipped out of Galena Park via seagoing tankers destined for points outside the State of Texas.

The principal products manufactured at the respondent's Port Neches works are roofing, asphalt, steel barrels, wood barrels, and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper, and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude oil is obtained from Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico. All of the felt, slate, sheet steel, and paper is procured from outside Texas.

The unfinished crude distillates from both the Galena Park and Port Neches refineries are pumped to the respondent's Port Arthur refinery where the refining process is completed. In finished form a substantial per cent of the crude-oil distillates pumped to Port Arthur eventually reach a destination outside Texas.

Products of the respondent are in part distributed by means of 2,100 wholesale outlets and over 40,000 retailers located in most of the States of the United States.

Gross receipts of the respondent for the fiscal year ending December 31, 1937, were in excess of \$280,000,000. According to the respondent's franchise tax return to the Secretary of State of Texas, covering the year 1937, over 86 per cent of its business was reported as interstate in character and approximately 13 per cent was reported as intrastate.

The respondent owns, maintains, and operates through its Marine Division approximately 28

oceangoing vessels having an average capacity of 11,000 tons. These vessels are used by the respondent in transporting its petroleum products between various ports of the Gulf of Mexico and other parts of the United States, and to and from Europe, South America, and other points.

II. The Organization Involved

National Maritime Union of America, Port Arthur Branch, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership all unlicensed seamen employed by the respondent.

III. The Unfair Labor Practices

A. The refusal to issue passes

On or about November 1, 1936, there was a general strike called in the shipping industry of the United States which lasted until sometime in the early part of January 1937. Immediately after the cessation of the strike a group known as the "rank and file" of the International Seamen's Union, an affiliate of the American Federation of Labor, formed the National Maritime Union of America, which later became affiliated with the Congress of Industrial Organizations.

Soon after its formation the Union began organizing unlicensed seamen employed on the respondent's ships. In this work the Port Arthur branch of the Union was especially active. It is undisputed that during the entire period here involved the re-

spondent refused permission to representatives of the Union not in its employ to board its vessels. The Union contended at the hearing that such refusals were discriminatory and illegally designed to prevent it from contacting its members on board. The respondent, on the other hand, offered evidence that it extended the prohibition against boarding its vessels to the representatives of any and all unions as well as to all other persons not in its employ. The respondent alleged that because of the highly inflammable nature of the cargo carried in its vessels such a policy is necessary in the proper conduct of its business. There is no evidence in the record that the respondent has discriminated against representatives of the Union by denying them access to its vessels while granting it to other persons not in its employ. It is clear that the Union was able to confer with the respondent at its offices on shore, and to contact its members employed by the respondent while they were on shore leave. Under these circumstances we find that by refusing passes to board its vessels to representatives of the Union the respondent has not interfered with, restrained, or coerced its employees in the exercise of their rights under the Act.

B. Interference, restraint, and coercion

Both J. Gordon Rosen and James P. Blasingame were hired by the respondent on or about June 30, 1937, at Port Arthur, Texas, and assigned to the

S. S. California as able-bodied seaman and quartermaster, respectively.

When Rosen went on board he reported for duty to Earl Baldwin, then acting first mate of the S. S. California. According to Rosen's account of the ensuing conversation Baldwin stated to him, "Just a minute, there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business." Blasingame gave a similar account of his first conversation with Baldwin. He said that when he boarded the S. S. California Baldwin warned him against three things, "drunkenness," "missing watches," and "union agitating."

Soon after Rosen and Blasingame went to work on the S. S. California, its regular first mate, one Dave Rosen, returned to the ship from a leave of absence. Earl Baldwin was shifted back to his regular position as second mate. As such, Baldwin was in charge of the 12 to 4 watch during which Blasingame, as quartermaster, steered the ship.

In the course of their duties, Blasingame and Baldwin were frequently on the bridge together and engaged in various conversations. Concerning these conversations, Blasingame testified, "He (Baldwin) told me he belonged to some union out on the west coast, and he got gypped out of about \$50, and he never did get nothing out of it, and he ain't never had any use for a union since," and that Baldwin also told him how the ship had been run without

union men aboard and how he (Baldwin) had to get rid of a man "because he was agitating union all the time." On one occasion, according to Blasingame, a newly hired seaman came aboard wearing a union button. Baldwin upon seeing it remarked, "There is a man who won't ride this ship long." At another time, Blasingame testified, Baldwin asked him if a certain new seaman was a "rank and file."⁸ Blasingame replied that he did not know and Baldwin said, "Well, if he is he won't be on this ship very long."

Blasingame also testified that Baldwin asked him about his own union affiliation as well as that of various other crew members, including J. Gordon Rosen. Blasingame avoided giving a direct answer to the question as to his own membership in the Union, he said, and stated to Baldwin that he knew nothing about the membership of others.

Baldwin testified that when J. Gordon Rosen and Blasingame first boarded the S. S. California he told them simply to go to their quarters. He denied warning them against "union agitation." Although he admitted having had, as second mate, various conversations with Blasingame, he flatly denied each and every anti-union statement attributed to him by the latter. The Trial Examiner did not credit Baldwin's denials, nor do we. We find that Bald-

⁸The Union was commonly referred to as the "rank and file" during the first stages of its organization and for some time thereafter.

win made the statements attributed to him by J. Gordon Rosen and Blasingame substantially as recited above.

As acting first mate on the S. S. California when J. Gordon Rosen and Blasingame were hired and when he warned them against "union agitation," Baldwin was second in authority only to the captain. As second mate at the time of his various conversations with Blasingame on the bridge of the S. S. California, Baldwin was the third ranking officer on the ship. During the absence of his superior officer or officers, Baldwin was in complete charge of the ship. He was at all times in charge of the deck crew during one watch of 8 hours each day. The respondent is clearly accountable for his statements of the nature discussed above.⁹

We find that the respondent, by warning its employees against organization, threatening to discharge union members, and questioning an employee about membership in the Union, has interfered with, restrained, and coerced its employees on the S. S. California in the exercise of the rights guaranteed in Section 7 of the Act.

C. The shipping articles

As stated above, the amended complaint charges the respondent with having discharged and refused

⁹See *Virginia Ferry Corporation v. N. L. R. B.*, 101 F. (2d) 103 (C. C. A. 4), enf'g *Matter of Virginia Ferry Corporation and Masters, Mates and Pilots of America*, 8 N. L. R. B. 730.

to reinstate various employees in violation of Section 8 (3) of the Act.

It is undisputed that each seaman involved in the particular alleged discharges, which are fully discussed in the sections below, signed shipping articles required by law,¹⁰ and that each received his discharge certificate¹¹ at the port from which he had originally embarked. The respondent contends that under the circumstances there is no issue of unlawful discharge involved in this proceeding, alleging that the shipping articles constituted contracts of employment under which the employment relationship was terminated as a matter of law at the end of the particular voyages concerned.

We cannot concur in this contention of the respondent. It is clear from the record that the termination of a voyage does not, as a matter of fact, terminate the employment relationship between the respondent and the members of the crew. With the exception of those seamen who either quit or are dismissed, the crew continues in the performance of its duties. Regular watches are maintained and the seamen remain subject to the orders of their ship's officers. Ordinarily the same crew goes on the succeeding voyage.

¹⁰46 U. S. C. A. 564; 46 U. S. C. A. 574.

¹¹In the event a seaman quits a particular vessel or is dismissed for any reason, the law requires that he be given a discharge certificate, 46 U. S. C. A. 643.

Despite the fact that seamen may have concurrently signed shipping articles for a voyage, the respondent may dismiss them on different days upon or after the end of the voyage, thus indicating that it is the dismissal by the respondent's officers rather than the completion of the voyage which terminates the employment relationship.¹² Furthermore, the respondent's working rules provide, "all unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay. Those in continuous service for two years or more shall be given an annual vacation of two weeks with pay." Since shipping articles signed by the respondent's seamen are never for voyages lasting as long as a year, the above-quoted provisions of the working rules would be meaningless if, as the respondent contends, the employment relationship was ended upon the completion of each voyage.

¹²Both J. Gordon Rosen and Clarence Buckless signed their last shipping articles on the S. S. Nevada on April 13, 1938, at Port Arthur for a voyage to Port Texaco, Louisiana, to be paid off in Port Arthur, Port Neches, or Houston. Buckless was dismissed by the respondent on April 18, 1938, at Port Arthur, while Rosen was dismissed April 19, 1938, at Port Arthur. The respondent contends in substance that neither man was discharged, but that the expiration of the shipping articles automatically terminated the employment relationship on the dates given.

On the basis of all the evidence, we find that notwithstanding the termination of a particular voyage, the employment relationship of each member of the crew on the respondent's ships here involved continued until he quit or was dismissed for a lawful cause.¹³

D. The alleged discharges of J. Gordon Rosen and James P. Blasingame from the S. S. "California."

At the time of the hearing both J. Gordon Rosen and Blasingame had been seamen for about 10 years, and able-bodied seamen for 6 and 7 years, respectively. Prior to their employment on the S. S. California on June 30, 1937, J. Gordon Rosen had worked about 4 months during 1935 for the respondent on the S. S. Nevada, from which he resigned, and Blasingame had been employed on various of the respondent's vessels intermittently since 1931 for short periods totaling about 7 months. He had not been dismissed from any of these vessels because of unsatisfactory work or conduct. Between periods of employment by the respondent J. Gordon Rosen and Blasingame worked on the ships of various other companies.

Both men joined the Union at its inception in the first part of 1937. J. Gordon Rosen was an especially active member. Immediately after he was

¹³See Matter of South Atlantic Steamship Company of Delaware and National Maritime Union of America, 12 N. L. R. B. 1367.

hired on the S. S. California he began discussing the Union with various members of the crew. He distributed union literature among the unlicensed seamen and started the practice of holding regular meetings of the Union, a practice which had been neglected prior to his coming aboard. On several occasions J. Gordon Rosen was elected as the crew's delegate to present grievances to the captain and first mate. Blasingame accompanied him as a co-delegate on one or more occasions.

On September 19, 1937, when the S. S. California was in Port Arthur, J. Gordon Rosen and Blasingame left the ship. According to the Union, they were discharged because of their union activity. The respondent contends that both men quit voluntarily.

Circumstances surrounding the alleged discharge of J. Gordon Rosen will be discussed first. He testified that on the morning of September 19, 1937, the boatswain said to him, "The mate told me you are fired." J. Gordon Rosen reports that he replied, "I guess you know what I am getting fired for," and that the boatswain answered, "Yes, I feel pretty bad about it. I ought to quit myself." The boatswain did not testify.

According to J. Gordon Rosen, he then packed his things and went to see Baldwin who was making out his discharge slip. He testified that he asked, "What is the reason for my getting fired?" and that Baldwin replied, "The reason, well, you know we don't want any agitating back there."

Blasingame testified that on the same morning he was below packing to leave the ship and that he heard the boatswain and the first mate, Dave Rosen, talking outside his bunk. Blasingame testified that he heard the boatswain say, "You are firing Rosen, the only good A. B. that I got on deck," and the first mate reply, "I don't give a damn. These guys aren't going to run this ship. This ship is no union ship."

Baldwin denied that he had dismissed J. Gordon Rosen, or that he knew anything about his leaving the ship until some time after the event, when the first mate instructed him to enter on the ship's crew list that J. Gordon Rosen and Blasingame had resigned.¹⁴ He denied having made out J. Gordon Rosen's discharge certificate.

Captain P. Peterson, of the S. S. California, was in Norway at the time of the hearing. The parties stipulated that if he were present he would testify that both J. Gordon Rosen and Blasingame had voluntarily quit, and that he personally paid them off. A comparison of the handwriting on both men's discharge certificates with Captain Peterson's signature on the shipping articles indicates that Captain Peterson both made out and signed the discharge certificates.

Dave Rosen, the first mate, testified that neither he nor Captain Peterson had dismissed J. Gordon

¹⁴The crew list was not introduced in evidence.

Rosen. He said that both J. Gordon Rosen and Blasingame told him before September 19, 1937, that they were going to quit. This latter statement is confirmed by J. Gordon Rosen who testified that on September 7, 1937, he and Blasingame unsuccessfully took up a dispute concerning overtime with the first mate. Concerning the first mate's failure to satisfy his request, J. Gordon Rosen said at the hearing, "When I had this conversation with the mate I told him if that is all they could afford to give us, I said, 'I am going to quit,' and James Blasingame told him the same thing, 'I am going to quit.' "

On the basis of the entire record, we find that the evidence is insufficient to establish that the respondent discharged J. Gordon Rosen from the S. S. California because of his membership in the Union.

Blasingame testified that in the morning of September 19, 1937, the first mate said to him, "Blasingame, you are fired right now," and that when he asked for the reason the first mate replied, "Never mind, you can't ride this ship any more. Go ride one of your rank and file ships."

Dave Rosen, on the other hand, testified that when the S. S. California got into Port Arthur, Blasingame told him that he was dissatisfied with conditions on board and was going to quit. Blasingame did not deny that he had announced on September 7, 1939, as testified by J. Gordon Rosen, that he was going to quit.

The account given by O. D. Mitchell, Blasingame's "bunkmate" on the S. S. California, of events on the morning of the alleged discharges is uncontradicted by other evidence in the record. Mitchell testified that on that morning he found Blasingame in their quarters packing his belongings. Mitchell asked him what had happened. Blasingame replied, according to Mitchell, "that he was getting off; that he didn't like the ship." Blasingame did not tell Mitchell that he had been "fired."

Mitchell also testified that Blasingame was not any more active in the Union than a number of the other employees on the ship. The record is clear that there were other men active in the Union on board the S. S. California.

On the basis of the entire record we find that the evidence is insufficient to establish that the respondent discharged James P. Blasingame from the S. S. California because of his membership in the Union.

E. The discharges of Clarence Buckless and J. Gordon Rosen from the S. S. "Nevada."

—At the time of the hearing, Clarence Buckless had been a seaman for 20 years and an able-bodied seaman for 12 years. He joined the Union on June 7, 1937. Buckless was hired by the respondent on November 17, 1937, and assigned to the S. S. Nevada as an able-bodied seaman. About a week

later he was promoted to the position of ship's boatswain. During the 13 years previous to his employment on the S. S. Nevada, Buckless had been employed intermittently on various of the respondent's ships for short periods totaling 18 months.

On the S. S. Nevada Buckless very soon became active as a leader and organizer of the Union. He called meetings of the Union for the crew, most of whom were members, and was delegated to speak with the captain and first mate concerning various grievances. Buckless testified that he told Carl Tranberg, the first mate, that he had been elected delegate of the Union.

Thereafter, on January 10, 1938, J. Gordon Rosen was again hired by the respondent and assigned to the S. S. Nevada as an able-bodied seaman. Rosen testified that when he boarded the S. S. Nevada he found that the entire crew, with the exception of one man, was composed of members of the Union.

Like Buckless, Rosen at once became active in affairs of the Union. He presided over meetings held in the crew's quarters each week and, along with Buckless and one or two others, acted as a delegate to discuss various controversial grievances with the ship's officers. He drafted a letter, copies of which the crew sent through the mails and hiring halls to crews of the respondent's other ships, urging them to join the Union. It seems clear that Buckless and Rosen were outstanding as active

leaders of the Union on board the S. S. Nevada, and that the ship's officers were aware of their activity.

On April 18, 1938, at Port Arthur, Hugo Swanson, captain of the S. S. Nevada, gave Buckless his discharge slip and told him that he was dismissed for "drunkenness and bringing liquor aboard the ship." A day later, on April 19, 1938, the first mate, Carl Tranberg, dismissed Rosen. Rosen testified that he asked Tranberg why he was being "fired," and that the latter answered, "Well, it might be the reason that your work is not satisfactory."

The respondent contended that Buckless' shipping articles terminated on April 18, 1938, and that he was not reemployed because of his alleged habitual drunkenness. Three officers of the S. S. Nevada testified concerning various occasions when Buckless came on board after shore leave "under the influence" of liquor. Buckless admitted that he drank while on shore but denied that his doing so interfered with his duties on the ship. The evidence does not entirely support his denial. On the other hand, it is clear from the record that heavy drinking is not uncommon among unlicensed seamen employed by the respondent, and that they are not ordinarily discharged for that reason. Also, it is undisputed that on more than one occasion, and during the course of a voyage, Captain Swanson

himself gave Buckless liquor in substantial quantities.¹⁵

As to Rosen, the respondent contended that he was not discharged because of his activity in the Union, but that his shipping articles expired on April 19, 1938, and he was not reemployed because he was lazy and continually neglected his duties. First Mate Tranberg testified that Rosen seemed to "intentionally lag behind in his work," and that on various occasions he left his position when he was supposed to be on watch and went aft to play cards, write, or smoke. Captain Swanson testified that Rosen appeared to him to be "purely lazy" and that Tranberg had often complained about his work.

Rosen denied that he had improperly performed any of his duties. It is clear that he does not smoke. The respondent admitted that when Rosen was employed on the S. S. Nevada in 1935, and on the S. S. California from June 30 to September 19, 1937, his work had been satisfactory.¹⁶

15. This was liquor which Buckless had obtained while the S. S. Nevada was in Spain. As the liquor came on board Captain Swanson confiscated it. During the return trip to the United States Captain Swanson gave it back to Buckless a bottle at a time.

16. As is discussed below, less than a month and a half after Buckless and Rosen received their discharge papers from the S. S. Nevada they were rehired by the respondent on the S. S. Washington as quartermaster and able-bodied seaman, respectively. In its brief and at the oral argument the

We feel that the conflicting evidence concerning the respondent's real reason for discharging and refusing to reemploy Buckless and Rosen on the S. S. Nevada is resolved by the testimony of Leo Herman and George Hart.

Leo Herman was hired by the respondent as an able-bodied seaman on the S. S. Nevada at about 7 a. m. on April 19, 1938, some hours after Buckless had left the ship but before the dismissal of Rosen. Herman testified that when he came on board Rosen and others asked him about his union affiliation, and when he told them that he was a member of the

respondent urged that the fact that they were rehired demonstrates that the two men had not been discharged from the S. S. Nevada because of their activity in the Union.

We do not feel that this argument tends to resolve any of the issues. It might equally well be urged that the respondent would hardly rehire Buckless as a quartermaster with the duty of steering the S. S. Washington, as it did, if he was in truth discharged from the S. S. Nevada because of habitual drunkenness as the respondent contends, and that the respondent would not rehire Rosen if he was in fact negligent and lazy.

The fact of the situation appears from all of the evidence to be that, in so far as the hiring of unlicensed seamen is concerned, each of the respondent's ships was operated largely as a separate unit, obtaining its employees from any of various uncoordinated agencies. A man might therefore be discharged from one of the respondent's ships and thereafter rehired on another, the fact of the rehiring having little or no bearing upon the merits of, or the reasons for, the previous discharge.

International Seaman's Union, an affiliate of the American Federation of Labor, they objected to his working on the ship. Herman then went to Tranberg, the first mate, and explained that the crew did not want him on board. Tranberg told him to go to work.

Later during the same day Herman again reported to Tranberg, who asked him, according to Herman, with whom he had the conversation about his union affiliation. Herman testified that he answered that, "he wasn't a rat," and that Tranberg then said, "I know who you had the conversation with. It was Baldy.¹⁷ Baldy is a good man, but he let the union go to his head. We had a boatswain¹⁸ on here. He done the same thing. Every time a — — — (new) man comes on board he asked him if he had a union book."

Herman further testified that about 9 days later Tranberg again spoke to him. Herman's account of this conversation follows:

He told me that he fired Baldy on account of union activities, but that is not the reason he gave him, but he also fired the boatswain on account of union activities but the captain found another reason to fire him. The only reason he told me (was) that I told him I

17. The record is clear that J. Gordon Rosen was commonly called "Baldy."

18. Herman testified that he understood that this reference was to Buckless.

didn't belong to the N. M. U.; I belonged to the I. S. U. Otherwise he wouldn't have told me.

During the period here involved, George Hart was a quartermaster on the S. S. Nevada. He testified that on April 19, 1938, he was standing nearby when Herman reported to Tranberg that the rest of the crew objected to his working because he was a member of the International Seaman's Union. Hart said that after Herman left, Tranberg turned to him and asked, "Hart, how about this? What is this all about? Hart replied that all of the crew were members of the Union except Herman and that they didn't want him on board. Tranberg then said, according to Hart, "When you go back aft you tell those people I don't want none of that kind of stuff on here. I am not going to have it. I thought I got rid of that when I got rid of that fellow yesterday." Hart said he understood that Tranberg was referring to Buckless when he said "that fellow," since only one other man, an ordinary seaman, had been discharged the previous day and he was not active in the Union.

Tranberg testified that he probably spoke to Herman when he came on board, but that he did not recall the conversation. He denied making the statements attributed to him by Herman but said nothing concerning the alleged conversation with Hart.

On the entire record, we credit the testimony of Herman and Hart. We find that the respondent discharged Clarence Buckless and J. Gordon Rosen from the S. S. Nevada, and refused to reemploy them on that ship because they had joined and actively assisted the Union.

F. The discharge of J. Gordon Rosen from the S. S. "Washington."

J. Gordon Rosen was unemployed from the time he left the S. S. Nevada until June 1, 1938, when he was rehired by the respondent for work as an able-bodied seaman on the S. S. Washington. As in the case of his previous employment with the respondent, soon after his arrival on the ship Rosen became very active in the affairs of the Union. He presided over meetings and was elected as a delegate. In that capacity from time to time he presented various grievances of the crew to Captain Bergman of the S. S. Washington. Although the captain refused to recognize Rosen as a delegate of the Union, most of the grievances were satisfactorily adjusted. As delegate, Rosen also discussed various controversial issues with C. L. Hand, the respondent's port captain at Port Arthur. On July 11, 1938, he drafted and signed an open letter from the crew of the S. S. Washington to the crews of all other ships owned by the respondent, urging them to organize and severely criticizing the respondent because it allegedly refused to improve the working conditions of its employees. This letter

was distributed widely through the mails and by personal contacts on shore. Rosen also sent a telegram to J. P. Roney, the general marine manager of the respondent's marine department, complaining that the captain of the S. S. Washington refused to recognize the delegates of the Union. It is clear that the officers of the S. S. Washington had knowledge of Rosen's activity on behalf of the Union.

On July 14, 1938, at Port Arthur, the first mate, C. B. Johannessen, told Rosen that he was "fired" because of "unsatisfactory seamanship." This occurred a few hours after Rosen, as delegate of the Union, had taken up an overtime dispute with C. L. Hand, the port captain.

The respondent contends that Rosen was not discharged because of his activity on behalf of the Union, but because he continually neglected his work. Both Bergman and Johannessen testified that on various occasions Rosen was noticeably negligent and lazy. The respondent also introduced in evidence the crew list of the S. S. Washington for July 16, 1938, showing a notation that on July 14, 1938, Rosen was "discharged for incompetency."

In view of Rosen's long experience as a seaman we do not credit the notation on the crew list that he was incompetent. Nor do we fully credit the testimony that Rosen was negligent and lazy in the performance of his duties. There is considerable evidence to the contrary. On the basis of the entire

record it seems apparent, and we find, that the respondent discharged Rosen from the S. S. Washington on July 14, 1938, and refused to reinstate him because he had joined and actively assisted the Union. Rosen desires reinstatement.

On the basis of the entire record we find that by discharging J. Gordon Rosen and Clarence Buckless from the S. S. Nevada, and by discharging J. Gordon Rosen from the S. S. Washington, the respondent has discriminated against them in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We further find that by refusing to reemploy Clarence Buckless on the S. S. Nevada after April 18, 1938, and by refusing to reemploy J. Gordon Rosen on the S. S. Nevada after April 19, 1938, and on the S. S. Washington after July 14, 1938, the respondent discriminated against the two men in regard to their hire and tenure of employment, thereby discouraging membership in the Union,¹⁹ and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

G. The discharge of Clarence Buckless from the S. S. "Washington."

Clarence Buckless was unemployed from the time

19. See footnote 13, *supra*.

he left the S. S. Nevada on April 18, 1938, until June 1, 1938, when he was hired by the respondent as a quartermaster on the S. S. Washington. While on the S. S. Washington, Buckless continued to be an active member of the Union, but it does not appear from the record that he was outstanding in this respect.

On July 14, 1938, at Port Arthur the first mate, C. B. Johannesen, told Buckless that he was "fired" for "missing a watch at Claymont, Delaware" and for being an unsatisfactory seaman.

The respondent contends that Buckless was not discharged because of his activity in the Union, but was refused reemployment because of his alleged habitual drunkenness and poor helmsmanship. The evidence that Buckless did considerable drinking and that it interfered with the proper performance of his duties on the S. S. Washington is convincing.

On the basis of all the evidence we find that the respondent did not discharge Buckless from the S. S. Washington, or refuse to reinstate him because of his activity in the Union.

H. The discharges of Albert P. Lortie, F. W. Zinkiewicz, and Rufus H. Andrews.

Albert P. Lortie had been a seaman for over 20 years at the time of the hearing. He was hired by the respondent for the first time on May 11, 1938, and assigned to the S. S. Roanoke as an able-

bodied seaman.

Soon after boarding the S. S. Roanoke, Lortie became active on behalf of the Union. He insisted that regular meetings of the members of the Union be held. These had been neglected prior to his coming on board. He presided at the meetings and saw that copies of the minutes, signed by himself as chairman, were posted on the bulkhead in the petty-officers' messroom. Lortie openly solicited non-union members of the crew to join the Union. There is no substantial showing in the record, however, that during Lortie's employment on the S. S. Roanoke, the respondent interfered with or discouraged in any way his activities of the nature described above.

On July 30, 1938, at Port Arthur, according to Lortie, the first mate, Edgar Carpenter, discharged him saying that he was a good seaman but that he had been "drunk and disorderly" and "threatening men back there to join the union." The respondent introduced uncontroverted evidence that in Charleston, South Carolina, just before the S. S. Roanoke returned to Port Arthur, Lortie had come on board in a drunken condition and had threatened a mess-boy, not a member of the Union, with physical violence unless he got off the ship. A fight was averted by the intervention of the first mate. There is other evidence in the record that on various occasions Lortie came aboard drunk and unable to perform his duties. Lortie admitted that he drank but denied

that it interfered with his work. A notation from the log book of the S. S. Roanoke stating, “. . . A. Lortie discharged for being intoxicated and disorderly on board ship in Charleston, July 24,” was read into evidence.

On the basis of all the evidence we find that the respondent did not discharge Lortie from the S. S. Roanoke, or refuse to reinstate him because of his activity in the Union.

As to F. W. Zinkiewicz and Rufus H. Andrews, the complaint, as amended, alleges that the respondent engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act, by discharging Andrews on July 8, 1938, from the S. S. Australia, and Zinkiewicz on July 14, 1938, from the S. S. Washington, and by refusing to reinstate them. The Trial Examiner in his Intermediate Report found that the two men were not discharged and refused reinstatement because of their union activities, but for good cause. In his Intermediate Report the Trial Examiner also granted the respondent's motion to dismiss that portion of the amended complaint in so far as it concerns Zinkiewicz and Andrews. The Union has filed no exception to the findings or rulings on the motion. We have examined the evidence and we agree with the Trial Examiner in his findings and rulings as to Zinkiewicz and Andrews.

We find that the evidence does not sustain the allegation that the respondent discharged and re-

fused to reinstate Zinkiewycz and Andrews for the reason that they had joined and assisted the Union.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III B, E, and F above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and to the free flow of commerce.

THE REMEDY

We have found that the respondent, by its anti-union statements and in other ways, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act. We shall order the respondent to cease and desist from such practices.

We have found that the respondent discriminatorily discharged Clarence Buckless from the S. S. Nevada on April 18, 1938. We shall therefore order the respondent to make Buckless whole for any loss of pay he may have suffered by reason of his discharge, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the discrimination on April 18, 1938, to June 1, 1938, the date on which he was reinstated by the respond-

ent on the S. S. Washington, less his net earnings²⁰ during such period. Since we have found that Buckless' subsequent discharge from the S. S. Washington was not discriminatory, we shall not order the respondent to offer him reinstatement.

We have found that the respondent discriminatorily discharged J. Gordon Rosen from the S. S. Nevada on April 19, 1938, and from the S. S. Washington on July 14, 1938. We shall therefore order the respondent to offer Rosen immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or

²⁰By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects. By "earnings" in this case is meant monetary compensation obtained at other employment and also the reasonable value of board and maintenance received in addition to such monetary compensation.

other rights and privileges. We shall further order the respondent to make Rosen whole for any loss of pay suffered by him by reason of his discharges by payment to him of a sum equal to the amount which he normally would have earned as wages from April 19, 1938, to date of his discharge from the S. S. Nevada, to June 1, 1939, when he was re-hired on the S. S. Washington, and from July 14, 1938, the date of his discharge from the S. S. Washington, to the date of the offer of reinstatement, less his net earnings²¹ during such periods.

Since both J. Gordon Rosen and Clarence Buckless, while in the employ of the respondent, received in addition to their monetary wage, maintenance on shipboard, we shall order that the reasonable value of such maintenance on shipboard during the period for which we shall award back pay shall be included in the total monetary compensation to be paid to each by the respondent.

The respondent contended in its brief and at the oral argument that the Board has no power to order reinstatement or back pay for any of the seamen involved in this proceedings on the alleged grounds that they have ceased to be employees of the respondent by reason of having since obtained regular and substantially equivalent employment elsewhere. This contention is without merit. The record shows that both Clarence Buckless and J. Gordon Rosen were unemployed from the dates upon

²¹See footnote 20, *supra*.

which they were discriminatorily discharged from the S. S. Nevada until the respondent rehired them on the S. S. Washington. Clearly then, during such periods neither man had substantially equivalent employment and neither lost his employee status. After J. Gordon Rosen was discriminatorily discharged from the S. S. Washington on July 14, 1938, he was unemployed until the last part of September 1938, when he obtained work on a ship bound for Europe. The details of this employment do not appear in the record. Thus, it is not shown that J. Gordon Rosen has obtained regular and substantially equivalent employment. Even if it be assumed, as the respondent contends, that he obtained such employment, we do not believe that he thereby became remediless, either for the purposes of back pay or for purposes of future employment by the respondent.²²

We have found that the respondent did not discharge or refuse to reinstate J. Gordon Rosen and James P. Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, or Rufus H. Andrews on the S. S. Australia because of their activities in the Union. We shall, therefore, order that the amended complaint, in so far as it alleges that the respondent discriminated in regard

²²See Matter of Eagle-Picher Mining & Smelting Company and International Union of Mine, Mill & Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111, 16 N. L. R. B., No. 78.

to the hire or tenure of employment of the above-named employees on the above-named ships, be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. National Maritime Union of America, Port Arthur Branch, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of J. Gordon Rosen and Clarence Buckless, thereby discouraging membership in the National Maritime Union of America, Port Arthur Branch, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent did not discharge or refuse to reinstate J. Gordon Rosen and James P. Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, or Rufus H. Andrews on the S. S. Australia, in violation of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gorden Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gorden Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the

reasonable value of his maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

And it is further ordered that the amended complaint, in so far as it alleges that the respondent has discriminated in regard to the hire and tenure of employment or terms or conditions of employment of J. Gordon Rosen and James Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, and Rufus H. Andrews on the S. S. Australia, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

[Title of Board and Cause.]

MOTION OF RESPONDENT, THE TEXAS COMPANY, TO REOPEN THE RECORD AND FOR LEAVE TO INTRODUCE FURTHER AND NEWLY DISCOVERED EVIDENCE.

The undersigned, as attorney for the respondent in the above-entitled proceeding, hereby moves pursuant to Section 37 of Article II of the Rules and Regulations of the National Labor Relations Board, for a reopening of the record in this proceeding and for leave to introduce further, additional and

newly discovered evidence therein, on the following grounds:

First: In the Board's decision and order, dated January 24, 1940, is included the following statement:

"After J. Gordon Rosen was discriminatorily discharged from the S.S. Washington on July 14, 1938, he was unemployed until the last part of September, 1938, when he obtained work on a ship bound for Europe. The details of this employment do not appear in the record. Thus, it is not shown that J. Gordon Rosen has obtained regular and substantially equivalent employment."

Second: The said decision and order of the Board directs and requires the respondent to reinstate said J. Gordon Rosen and, in addition, to pay to said Rosen back pay from April 19, 1938, the date of his alleged discharge from the S.S. "Nevada", to June 1, 1938, when he was rehired on the S.S. "Washington", and from July 14, 1938, the date of his alleged discharge from the S.S. "Washington", to the date of his reinstatement by respondent.

Third: During the course of the adjourned hearing held before the Trial Examiner in Port Arthur on November 28, 1938, the attorneys for the Board and the Union conceded that said J. Gordon Rosen had been employed on a vessel of Lykes Bros. for a period of five weeks prior to November 28, 1938,

and that he was at that time en route to Europe (See Transcript of Proceedings, pp. 1965, 1966). Upon the basis of that admission the respondent moved to dismiss the complaint filed by the Board on the ground, among others, that said Rosen had obtained other regular and substantially equivalent employment elsewhere but such motion was denied.

Fourth: As appears from the record, said J. Gordon Rosen was at sea at the time of the adjourned hearing and respondent was ignorant of his whereabouts until informed by the attorneys for the Board and Union (See Transcript of Proceedings, pp. 1965, 1966). Accordingly, it was not possible for respondent to present any evidence at that time to substantiate respondent's contention that said Rosen had obtained other regular and substantially equivalent employment elsewhere.

Fifth: Since the conclusion of said hearing on November 29, 1938, respondent has continued to seek evidence upon this question and has now discovered evidence to the effect that said Rosen was employed on vessels of Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., as follows: on the S.S. "Meanticut" from October 10, 1938, until April 3, 1939, when that vessel was laid up, and on the S. S. "Labette" from August 19, 1939, until October 6, 1939, at which time he voluntarily quit said vessel.

Sixth: The evidence hereinabove referred to is material and will change the result in this proceeding since it establishes that said J. Gordon Rosen

had obtained other regular and substantially equivalent employment following his last alleged discharge by respondent, which fact affects any right said Rosen might have to reinstatement or to back pay or both.

Although respondent has contended and still contends that the finding of the Trial Examiner and the Board that said J. Gordon Rosen was unlawfully discharged from the S.S. "Nevada" on April 19, 1938, and from the S.S. "Washington" on July 14, 1938, is not supported by substantial evidence, nevertheless, even if it be assumed that said discharges were unlawful, since respondent has discovered and is now in possession of evidence as above set forth, which establishes that said J. Gordon Rosen did obtain other regular and substantially equivalent employment following his last alleged discharge by respondent, and since said evidence is newly discovered and could not have been discovered during the course of the hearing herein, respondent believes that the record herein should be reopened and respondent given leave to introduce further and additional evidence and testimony as to the matters herein referred to.

In support of this motion, the undersigned attaches hereto and makes a part hereof the following affidavits:

1. Affidavit of Albert E. Van Dusen, sworn to the 7th day of March, 1940.

2. Affidavit of T. E. Buchanan, General Manager of the Marine Department of re-

spondent, The Texas Company, sworn to the 7th day of March, 1940.

3. Affidavit of A. E. Jimison, Local Manager, Marine Department, Lykes Bros. Steamship Co., Inc., New Orleans, Louisiana, sworn to the 6th day of March, 1940.

Wherefore, respondent respectfully prays that the Board reopen the record herein for further proceedings in accordance with the foregoing.

Dated: New York, N. Y., March 7th, 1940.

ALBERT E. VAN DUSEN,
Attorney for Respondent,
The Texas Company,
135 East 42nd Street,
New York, N. Y.

[Title of Board and Cause.]

AFFIDAVIT OF ALBERT E. VAN DUSEN

State of New York,
County of New York—ss.

Albert E. Van Dusen, being duly sworn, deposes and says:

I am attorney for The Texas Company, respondent in the above-entitled proceeding, having offices at 135 East 42nd Street, New York City, and in such capacity appeared at the hearings before the Trial Examiner in that proceeding and am, therefore, fully acquainted with the evidence adduced at

such hearings and all the proceedings heretofore had herein.

At the hearings before the Trial Examiner on November 28, 1938, the attorneys for the Board and the Union conceded that J. Gordon Rosen, one of the persons whom the Board found to have been unlawfully discharged by the respondent, had been employed on a vessel of Lykes Brothers for a period of five weeks and was at the time of the hearing en route to Europe.

This concession appears in the transcript of the proceedings as follows:

“Mr. Pipkin: To preface a further motion I want to make here, I would like to ask Mr. Martin, Mr. Mandell and Mr. Ames where Mr. J. Gordon Rosen is now.

“Mr. Martin: He is on a boat which the last I heard of was in Europe.

“Trial Examiner Persons: What line is he on?

“Mr. Mandell: Lykes Bros.

“Trial Examiner Persons: Do you know how long he has been on there?

“Mr. Ames: Approximately five weeks.”
(Record pp. 1965, 1966)

Your deponent, as well as officials of the respondent, were ignorant of the whereabouts of said J. Gordon Rosen until informed thereof as above indicated by the attorneys for the Board and the Union, and it was, therefore, not possible to present any

evidence at the time of the hearing to substantiate respondent's contention that said Rosen had obtained other regular and substantially equivalent employment.

Since the conclusion of said hearing on November 29, 1938, respondent has continued to seek evidence upon this question and has now discovered evidence as set forth in the attached affidavit of E. A. Jimison to the effect that said J. Gordon Rosen had, in fact, obtained other regular and substantially equivalent employment.

In view of the foregoing and the facts disclosed in the affidavits attached hereto, deponent has advised his client that there exists sufficient justification for a reopening of the record in this proceeding, and that the motion herein made is meritorious.

ALBERT E. VAN DUSEN

Sworn to before me this 7th day of March, 1940.

(Seal)

T. HARRY NORRIS,

Notary Public, Kings County No. 156. New York
County Clerk's No. 185.

Commission expires March 30, 1941.

[Title of Board and Cause.]

AFFIDAVIT OF T. E. BUCHANAN

State of New York,
County of New York—ss.

T. E. Buchanan, being duly sworn, deposes and says:

I am General Manager of the Marine Department of The Texas Company, respondent herein, having an office at 135 East 42nd Street, New York City.

Shortly after the conclusion of the hearings before the Trial Examiner in the above-entitled case, I was advised by Mr. Albert E. Van Dusen, counsel for the respondent, that it had been brought out at such hearings that J. Gordon Rosen had been employed on a vessel of Lykes Brothers for a period of five weeks prior to November 28, 1938, on which date he was en route to Europe, and I was requested by Mr. Van Dusen to endeavor to ascertain the facts as to the employment of said J. Gordon Rosen.

Pursuant to such request, I communicated with Mr. E. A. Jimison, Local Manager, Marine Department of Lykes Bros. Steamship Co., Inc., New Orleans, Louisiana, and received from Mr. E. A. Jimison the information which is now incorporated in the attached affidavit of Mr. Jimison, sworn to the 6th day of March, 1940.

T. E. BUCHANAN

Sworn to before me this 7th day of March, 1940.

(Seal) T. HARRY NORRIS,

Notary Public, Kings County No. 156. New York
County Clerk's No. 185.

Commission expires March 30, 1941.

AFFIDAVIT OF E. A. JIMISON

State of Louisiana,
Parish of Orleans—ss.

E. A. Jimison, being duly sworn, deposes and says:

(1) I am Local Manager of the Marine Department of Lykes Bros. Steamship Co., Inc. and of Lykes-Coastwise Line, Inc., a subsidiary of such corporation, having offices in the Whitney Bank Building at New Orleans, Louisiana.

(2) In the capacity of Local Manager I have supervision and charge over the personnel and employment records of the corporations just referred to.

(3) An examination of the records of Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., discloses that J. Gordon Rosen was employed by such companies as an able bodied seaman as follows:

1. On the vessel S/S "Meanticut" continuously from October 10, 1938, to April 3, 1939, at which time he left such vessel along with other seamen due to the fact that it was laid up indefinitely.

2. On the vessel S/S Labette continuously from August 9, 1939 to October 6, 1939, at which time he voluntarily quit said vessel.

3. That while employed as an able bodied seaman on the vessels just referred to Mr. Rosen was paid wages in the sum of \$72.50

per month, plus overtime at the rate of 70¢ per hour.

4. That in connection with his employment on the vessels just referred to Mr. Rosen signed the customary shipping articles, either foreign or coastwise, and was employed on a permanent basis as were all other seamen who were employed for service on such vessels provided their services and conduct were satisfactory.

5. That it was customary prior to and upon completion of each voyage and at time of signing articles and signing off articles for Mr. Rosen as well as other members of the crew of the vessels referred to to be given the usual medical examination incidental to their employment.

Signed: E. A. JIMISON

Sworn to before me this 6th day of March, 1940.

(Seal)

Signed: F. S. COUVILLON,

Notary Public.

[Title of Board and Cause.]

ORDER DENYING MOTION TO REOPEN
THE RECORD AND FOR LEAVE TO
INTRODUCE FURTHER AND NEWLY
DISCOVERED EVIDENCE

A charge and amended charges, pursuant to Section 10(b) of the Act, having been filed in the above-

entitled case, a complaint thereon having been issued, hearings having been duly held before Howard Myers and before Charles E. Persons, Trial Examiners duly designated, the Intermediate Report of the said Howard Myers having been issued and served upon the parties, Exceptions thereto and a brief in support thereof having been filed by the respondent, oral argument on the said Exceptions having been heard before the Board at Washington, D. C., the Board, on January 24, 1940, having issued a Decision and Order in which it ordered in substance, among other things, that the respondent, The Texas Company, offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him, and that the respondent make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment; and the respondent, prior to the issuance of said Decision having contended that the Board was without power to order reinstatement or back pay for the said J. Gordon Rosen because he had obtained regular and substantial employment subsequent to his discharge and therefore ceased to be an employee; and the Board having stated in its Decision and Order that it was not shown that J. Gordon Rosen had obtained regular and sub-

stantially equivalent employment, and that such fact, even if assumed, did not prevent the Board from requiring respondent to reinstate the said J. Gordon Rosen and to pay him back wages; and the respondent, on March 11, 1940, having filed its Motion To Reopen Record And For Leave To Introduce Further And Newly Discovered Evidence in which it alleged in substance, among other things, that it has recently discovered new evidence that the said J. Gordon Rosen obtained regular and substantially equivalent employment following his last discharge by the respondent and that the record should be reopened for the introduction of such evidence; and the respondent having filed with the aforesaid Motion affidavits purporting to show that J. Gordon Rosen was employed as an able-bodied seaman at the rate of \$72.50 per month plus overtime at the rate of 70 cents per hour by Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., on the S. S. Meanticut from October 10, 1938, to April 3, 1939, at which time he left the said vessel along with other seamen due to the fact that it was laid up indefinitely, and on the S. S. Labette from August 9, 1939, to October 6, 1939, at which time he voluntarily resigned; and the Board having duly considered the said Motion and the affidavits accompanying it, and having been advised in the premises, and being of the opinion (1) that the respondent is not entitled to introduce evidence concerning the employment of said J. Gordon Rosen subsequent to the hearing in this proceeding; (2) that the re-

spondent's Motion is not timely; and (3) that the matters set forth in the respondent's Motion, if assumed to be true, do not show that the said J. Gordon Rosen has secured regular and substantially equivalent employment;

It Is Hereby Ordered, for each of the foregoing reasons, that the said Motion To Reopen The Record And For Leave To Introduce Further and Newly Discovered Evidence be, and it hereby is, denied.

Dated, Washington, D. C., March 22, 1940.

By direction of the Board:

(Seal)

BEATRICE M. STERN,

Acting Secretary.

In the United Circuit Court of Appeals for the
Ninth Circuit

No. 9518

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW.

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, The Texas Company, respectfully shows and alleges:

I. That your petitioner is, and at all times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Montana, Idaho and Arizona; and that it is now and at all times hereinafter mentioned has been transacting business in the said States of Montana, Idaho and Arizona, and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

II. That heretofore and on or about September 3, 1938, upon charges filed by the National Maritime Union of America, Port Arthur Branch, (hereinafter called the "Union"), the respondent, National Labor Relations Board (hereinafter sometimes referred to as the "Board"), issued a complaint against your petitioner alleging that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as the "Act"), 49 Stat. 449, in that your petitioner had (1) discharged and refused to reinstate certain seamen, (2) through its officers, agents and employees, made various statements to its employees discouraging affiliation in or activity on behalf of the Union, and (3) denied passes to representatives of the Union to board petitioner's vessels to contact members of the Union, all in violation of said Act.

III. That on or about September 12, 1938, your petitioner duly served and filed its answer and amended answer to said complaint in which your petitioner denied that it had engaged in or was engaging in any unfair labor practices or had violated the Act as alleged in said complaint.

IV. That issue having been joined in the said proceeding between the Board and your petitioner, a hearing was held at Port Arthur, Texas, from September 12 to 16 and from September 19 to 22, 1938, before Howard Myers, a Trial Examiner duly designated by the Board, and a further hearing was held also at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board.

V. That at the opening and close of the Board's case and at the close of the entire case, your petitioner duly moved to dismiss the Board's complaint and all proceedings thereunder on the ground that no cause of action was alleged or proved, but said motions were denied by the Trial Examiner.

VI. That during the course of the said hearing your petitioner duly objected to certain evidence offered on behalf of the Board and the Union and duly moved to strike out certain other evidence admitted over petitioner's objections, but the Board's Trial Examiner overruled said objections and denied such motions.

VII. That on or about May 8, 1939, Trial Examiner Myers filed his Intermediate Report, in which he found and concluded that petitioner had

engaged in unfair labor practices and in which he recommended that petitioner take certain affirmative action to remedy the situation brought about by such unfair labor practices, including reinstatement with back pay of four seamen.

VIII. That thereafter, to-wit, on or about June 13, 1939, pursuant to the rules and regulations of the Board, your petitioner duly made, served and filed with the Board its exceptions to the Trial Examiner's Intermediate Report.

IX. That thereafter, to-wit, on October 24, 1939, oral argument of counsel was had before the Board upon the issues of fact and of law in said proceedings, in which argument counsel for your petitioner prayed that said complaint and the proceedings thereunder be dismissed upon the grounds set forth in petitioner's various motions to dismiss and in petitioner's exceptions to the Trial Examiner's Intermediate Report and upon the further ground that neither the acts of your petitioner alleged in said complaint or the acts of your petitioner as shown in the testimony or other evidence at the hearing constituted any violation of the National Labor Relations Act, 49 Stat. 449, or of any other law or statute, the enforcement of which is entrusted to the Board.

X. That thereafter, to-wit, on or about January 24, 1940, the said Board did make and file its decision and final order in the said proceedings, which decision and order were served on your petitioner

by mail on January 24, 1940, and by which your petitioner was ordered to:

“1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organizations;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his

hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his

maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National

Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith."

XI. That subsequent to the date of said decision and order, to-wit, on or about March 11, 1940, your petitioner filed with the Board a motion to reopen the record and for leave to introduce further and newly discovered evidence to establish that J. Gordon Rosen, one of the discharged employees whom petitioner was required by the Board's decision and order to reinstate, had obtained regular and substantially equivalent employment elsewhere, which motion was, by order dated March 22, 1940, denied by the Board.

XII. That the Board's aforesaid decision and orders are erroneous in fact, unauthorized and insufficient in law, and ought to be reviewed and set aside by this Court for the following reasons:

(1) The said decision and orders, and the findings of fact and conclusions of law of the Board upon which the said decision and orders are based, are not in accordance with law, are contrary to the evidence, are without evidence to support them, are not supported or warranted by substantial or credible evidence and

reflect bias and prejudice on the part of the Board's Trial Examiners;

(2) The Board, through its Trial Examiners, erred in admitting and considering incompetent, immaterial and irrelevant testimony prejudicial to petitioner, as is more fully and specifically set forth in petitioner's exceptions to the Intermediate Report filed by Trial Examiner Myers;

(3) The acts of petitioner as shown by the testimony do not constitute a violation of the National Labor Relations Act;

(4) The Board erred in finding and concluding that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(1) of the Act;

(5) The Board erred in finding and concluding that your petitioner warned its employees against organization, threatened to discharge Union members and questioned an employee about membership in the Union and thereby interfered with, restrained and coerced its employees on its vessel, the S. S. California, in the exercise of the rights guaranteed by Section 7 of the said Act;

(6) The Board erred in finding and concluding that your petitioner discharged Clar-

ence Buckless and J. Gordon Rosen from the S. S. Nevada because of Union activities;

(7) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the S. S. Washington because of Union activities;

(8) The Board erred in awarding back pay to Clarence Buckless for the period from April 18, 1938 to June 1, 1938, since the Board did not direct reinstatement of said Clarence Buckless;

(9) The Board erred in directing reinstatement of J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere;

(10) The Board erred in awarding back pay to J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere;

(11) The Board erred in directing petitioner to cease and desist and to take affirmative action as specified in the Board's aforesaid decision and orders and to post notices to such effect;

(12) The Board erred in denying petitioner's motion to reopen the record and for leave to introduce further and newly discovered evidence to establish that J. Gordon Rosen had obtained regular and substantially equivalent employment elsewhere.

Wherefore, your petitioner prays this Honorable Court to review and set aside the decision and orders of the National Labor Relations Board herein referred to and to grant petitioner such other and further relief as to the Court may seem just and proper.

Dated: May 3, 1940.

THE TEXAS COMPANY

By HARRY T. KLEIN

Vice President

ALBERT E. VAN DUSEN,

135 East 42nd Street,

New York City, N. Y.,

J. A. McNAIR,

929 So. Broadway,

Los Angeles, California,

JAMES H. PIPKIN,

P. O. Box 2332,

Houston, Texas,

Attorneys for Petitioner,

The Texas Company.

State of New York,

County of New York—ss.

Harry T. Klein, being duly sworn, deposes and says: That he is an officer, to wit, Vice President, of The Texas Company, the petitioner named in the foregoing petition; that he has read the foregoing petition by him subscribed as such officer and knows the contents thereof; that the same is true to the

knowledge of deponent except as to the matters therein related to be alleged on information and belief, and that as to those matters he believes it to be true.

HARRY T. KLEIN

Subscribed and sworn to before me this 3rd day of May, 1940.

(Seal)

S. B. GIFFORD,

Notary Public Kings County. Clerk's No. 412, Register's No. 1016. N. Y. Co. Clerk's No. 25, Reg. No. 1G22.

My Commission Expires March 30, 1941.

[Endorsed]: Mailed May 7, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

PETITION IN INTERVENTION

To the Honorable, the Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes the National Maritime Union of America, by its attorney, William L. Standard, Esq., and respectfully petitions this Honorable Court for leave to intervene and be made a party to the above-entitled suit, for all purposes, for leave to file its brief, and for leave to argue orally on the appeal herein, and respectfully alleges the following:

First: That the National Maritime Union of America is an unincorporated labor association, having its principal office and place of business in the City and State of New York.

Second: That the proceedings sought to be reviewed herein by The Texas Company, were initiated by the National Labor Relations Board, on charges duly filed on behalf of the aforesaid National Maritime Union of America.

Third: That thereafter hearings were conducted by the National Labor Relations Board, at which hearings The Texas Company was the respondent, and the National Maritime Union of America was the Complainant, and that the said National Maritime Union of America, by counsel, actively participated in the said hearings.

Fourth: That thereafter The Texas Company, aforesaid, sought to reverse the intermediate report and the recommendations made by the Trial Examiner, and the case was argued before the National Labor Relations Board at Washington, and that the aforesaid William L. Standard, by Max Lustig, of counsel, argued the case at this hearing.

Fifth: That thereafter the National Labor Relations Board issued an order directing The Texas Company, among other things, to cease discouraging membership in the National Maritime Union of America, to cease discriminating against the members of the said Union, and to reinstate certain members of the said Union.

Sixth: That The Texas Company seeks in this suit to reverse and set aside the aforementioned order issued by the National Labor Relations Board.

Seventh: That while the nominal parties to this proceeding are the National Labor Relations Board and The Texas Company, which filed a petition for review, the National Maritime Union of America has a legal and equitable interest in the proceeding and in the outcome thereof.

Eighth: That the dispute herein to be determined really exists between the National Maritime Union of America and The Texas Company.

Wherefore, the National Maritime Union of America respectfully petitions this Honorable Court for leave to intervene and be made a party to the suit for all purposes, for leave to file its brief and for leave to argue orally before this Court.

Dated: New York, N. Y., May 23rd, 1940.

NATIONAL MARITIME
UNION OF AMERICA,

Petitioner.

By JOSEPH CURRAN,

President.

WILLIAM L. STANDARD,
General Counsel to National
Maritime Union of America,
Office & P. O. Address
291 Broadway,
Borough of Manhattan,
City of New York.

UNINCORPORATED ASSOCIATION
VERIFICATION

State of New York,
County of New York—ss.

Joseph Curran, being duly sworn, deposes and says that he is the President of the National Maritime Union of America, Petitioner herein, that he has read the foregoing Petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the National Maritime Union of America is because the said is an unincorporated Association, and deponent an officer thereof, to wit its President.

NATIONAL MARITIME UNION,
By JOSEPH CURRAN,
Pres.

Sworn to before me, this 24th day of May, 1940.

ABRAHAM WEISBERG,

Notary Public, Kings County, Kings County,
N. Y. [Clks' Nos. and Reg. Nos. illegible.]

Commission expires March 30, 1942.

[Endorsed]: Filed May 29, 1940.

[Title of Circuit Court of Appeals and Cause.]

SUGGESTIONS OF THE NATIONAL LABOR
RELATIONS BOARD WITH RESPECT TO
THE PETITION OF THE NATIONAL
MARITIME UNION OF AMERICA FOR
LEAVE TO INTERVENE.

The National Labor Relations Board does not oppose the petition of the National Maritime Union of America for leave to file a brief as *amicus curiae* and to argue orally in that capacity.

The Board deems it appropriate, however, to point out that, contrary to statements contained in paragraphs Third, Seventh, and Eighth of said petition, this proceeding is between the Board and petitioner, The Texas Company, that the Board acts solely "on behalf of the public" and not for the enforcement of any private right, and that the National Maritime Union of America has no legal or equitable right to seek enforcement of the Board's order herein under Section 10 of the Act. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 60 S. Ct. 561, 563-565. Accordingly, the Board cannot acquiesce in the statements, contained in said paragraphs of the petition, that the Board is merely a "nominal" party to this proceeding and that "the dispute herein to be determined really exists between the National Maritime Union of America and The Texas Company."

Dated at Washington, D. C., this 5th day of June, 1940.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed June 7, 1940.

At a Stated Term, to wit: The October Term A. D. 1939, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the tenth day of June, in the year of our Lord one thousand nine hundred and forty.

Present:

Honorable William Denman, Circuit Judge,
Presiding,

Honorable Clifton Mathews, Circuit Judge,
Honorable William Healy, Circuit Judge.

[Title of Cause.]

ORDER GRANTING MOTION FOR LEAVE
TO INTERVENE

The motion of National Maritime Union of America for leave to intervene and be made a party to the above-entitled cause for all purposes, for leave to file its brief, and for leave to argue orally

on the appeal herein, coming on regularly for hearing, and good cause therefor appearing,

It is ordered that said motion be, and hereby is granted, and said National Maritime Union of America be, and hereby is permitted to intervene and is made a party hereto for all purposes, for leave to file its brief, and for leave to argue orally on the hearing herein.

[Title of Circuit Court of Appeals and Cause.]

REPLY TO SUGGESTIONS OF THE NATIONAL LABOR RELATIONS BOARD

The National Maritime Union of America, replying to the argument adduced by the National Labor Relations Board, in opposition to the petition of the Union, for leave to intervene and be made a party, respectfully calls the attention of this Honorable Court to the case of *Waterman Steamship Corp. v. National Labor Relations Board, et al.*, 103 Fed. (2d) 157, which was heard by the United States Circuit Court of Appeals for the Fifth Circuit on April 11th, 1939, and in which case the undersigned was permitted to intervene by the Court on behalf of the National Maritime Union of America, the petitioner herein. That case arose out of a similar unfair labor practice and involved an appeal by the *Waterman Steamship Corp.* to set aside an order of the National Labor Relations Board.

The Court permitted the undersigned, as attorney for the National Maritime Union of America, to intervene, file a brief and engage in oral argument before the Court. In that case the Court also permitted the Seamen's Reorganization Committee, a rival union, to intervene and be heard.

We also wish to call the Court's attention to the case of the South Atlantic Steamship Company of Delaware v. National Labor Relations Board, Case No. 9491, which is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, in which case the undersigned petitioned the Court for an order of intervention on behalf of the National Maritime Union of America, on a petition similar to the instant one. That petition was granted on the 3d day of May, 1940, by Hon. Samuel H. Sibley of the United States Circuit Court of Appeals.

In opposition to the petition of intervention in the South Atlantic Steamship Company case, the National Labor Relations Board, by Robert B. Watts, associate general counsel, submitted the same arguments to the United States Circuit Court of Appeals for the Fifth Circuit as are submitted herein.

The case of the Amalgamated Utility Workers v. Consolidated Edison Co., 60 Sup. Ct. 561, cited by the National Labor Relations Board in support of its argument, was also cited by the Board, in opposing the application in the South Atlantic Steamship Company case, *supra*, to the United States

Circuit Court of Appeals for the Fifth Circuit. By granting that motion, that Court overruled the objections of the National Labor Relations Board to the granting of the motion for intervention.

In the case of *Amalgamated Utility Workers v. Consolidated Edison Co.*, 60 Sup. Ct. 561, the United States Supreme Court merely held that the National Labor Relations Act conferred exclusive power upon the National Labor Relations Board to institute contempt proceedings for the violation of a Court decree, directing enforcement of the Board's order. That issue is not before this Court in the instant proceeding.

The mere refusal of the National Labor Relations Board to acquiesce in statements contained in the petition for leave to intervene, made by the National Maritime Union of America, does not constitute any valid argument for a denial of the within petition.

The National Maritime Union of America has a membership of more than 50,000 seamen, many of whom, in the course of their employment, serve on board the tankers of the Texas Company.

The National Maritime Union of America instituted the within proceedings before the National Labor Relations Board. Its counsel appeared at the hearings held by the National Labor Relations Board and participated in the proceedings, and its membership has a vital and substantial property interest in the determination of this appeal.

Wherefore, the National Maritime Union of America further prays that the petition to intervene and be made a party be granted.

Dated: New York, New York, June 10th, 1940.

WILLIAM L. STANDARD,
Attorney for National Mari-
time Union of America,
Petitioner.

[Title of Circuit Court of Appeals and Cause.]

MEMORANDUM IN OPPOSITION TO PE-
TITION OF NATIONAL MARITIME
UNION OF AMERICA FOR LEAVE TO
INTERVENE, ETC.

The Texas Company, petitioner in the above entitled proceeding, opposes the petition filed herein by the National Maritime Union of America for leave to intervene and to be made a party to the above entitled proceeding and for leave to file a brief and to argue orally, on the following grounds:

1) The proceeding and dispute herein is solely between the National Labor Relations Board and The Texas Company, and the Board is not, therefore, as alleged in the petition of the National Maritime Union, only a "nominal party".

2) The National Maritime Union has no legal or equitable right to enforce the Board's order in this proceeding. This right rests solely

with the National Labor Relations Board. See *Amalgamated Utility Workers vs. Consolidated Edison Co.*, 60 S. Ct. 561.

3) Section 10 (f) of the National Labor Relations Act provides that "any person aggrieved" by a final order of the Board may obtain a review of an order of the National Labor Relations Board. The "aggrieved" person in this proceeding is The Texas Company and not the National Maritime Union. No provision is made in the Act or in the rules and regulations issued of the Board for the Union to participate in a proceeding of this nature.

4) Under Rule 24 of the Federal Rules of Civil Procedure a petition for intervention is ordinarily not allowed in an appellate court. See *Morin vs. City of Stuart* (C. C. A. 5th Cir., Dec. 12, 1939) Federal Rules Service, Index No. 24 b.4, Case No. 2.

5) No question of great public importance is alleged to be involved in this proceeding which might justify granting to the National Maritime Union the right to appear or file a brief herein.

Wherefore, The Texas Company respectfully prays that this Court deny the petition to intervene herein made by the National Maritime Union of America.

Dated: New York, N. Y., June 8, 1940.

ALBERT E. VAN DUSEN,

135 East 42nd Street,

New York City, N. Y.

J. A. McNAIR,

929 So. Broadway,

Los Angeles, California.

JAMES H. PIPKIN,

P. O. Box 2332,

Houston, Texas.

Attorneys for Petitioner,

The Texas Company.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND REQUEST FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, C. 372, 29 U. S. C. sec. 151, et seq.), files this answer and request for enforcement of its order heretofore issued against The Texas Company, the petitioner herein:

1. The Board admits the allegations contained in paragraph I of the petition for review.

2. With respect to the allegations contained in paragraphs II to XI, inclusive, of the said petition for review, the Board, answering, prays reference to the certified transcript of the entire record in the proceedings before the Board, filed herewith, for a full, exact and complete statement of all the proceedings had in this case and of the pleadings, testimony and evidence, findings of fact, conclusions of law, and order, of the Board.

3. The Board denies the allegations contained in paragraph XII of the petition for review and further denies each and every allegation contained in the sub-sections thereunder numbered (1) to (12), inclusive, of the said petition.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order, were and are in all respects valid and proper under the National Labor Relations Act.

Wherefore, the Board respectfully prays this Honorable Court that said petition be denied in so far as it prays that the order of the Board be set aside, and in so far as it prays that said order be stayed pending final disposition of this review.

Further answering, the Board, pursuant to Section 10(e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board on

January 24, 1940, in the proceedings instituted by it against the petitioner, The Texas Company, said proceedings being designated on the records of the Board as Case No. C-1276, the title thereof being "In the Matter of The Texas Company, Marine Division and National Maritime Union, Port Arthur Branch."

In support of this request for enforcement of its said order, the Board respectfully alleges as follows:

(a) Petitioner, a Delaware corporation, is engaged in business in the State of Texas, within this Judicial Circuit. By reason thereof, this Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified transcript of the entire record thereof, filed herewith, to which reference is hereby made, and including, without limitation, complaints, amendments thereto, answers, hearing for the purpose of taking testimony and receiving other evidence, intermediate report and exceptions filed thereto, and written and oral argument before the Board, the Board, on January 24, 1940, made its decision, duly stated its findings of fact and conclusions of law and issued an order, directed to the petitioner, its officers, agents, successors and assigns. So much of said order as relates to this proceeding reads as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of

the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this

Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and transcript to be served upon petitioner, that this Court take jurisdiction of the proceedings in Case No. C-1276 and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence a decree denying in whole the petition to set aside, vacate and annul the order of the Board and enforcing in whole the order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR

RELATIONS BOARD,

By CHARLES FAHY,

General Counsel.

Dated at Washington, D. C., this 24th day of June 1940.

District of Columbia—ss.

Charles Fahy, being first duly sworn, states that he is General Counsel of the National Labor Relations Board, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

CHARLES FAHY,
General Counsel.

Subscribed and sworn to before me this 24th day of June 1940.

(Seal) DANIEL T. GHENT, JR.,
Notary Public, District of Columbia.

My commission expires August 31, 1944.

[Endorsed]: Filed June 26, 1940. Paul P. O'Brien, Clerk.

[Title of Board and Cause.]

TESTIMONY

BOARD'S EXHIBIT No. 5

[Title of Board and Cause.]

STIPULATION

It is hereby stipulated by and between the counsel for The Texas Company, Marine Division, and Counsel for the Sixteenth Region National Labor Relations Board, that the following facts are true

and correct and may be so found by the National Labor Relations Board or any appropriate court of the United States. Nothing herein, however, shall preclude the respondent or the National Labor Relations Board from submitting such further and additional evidence as might be deemed necessary by either of the parties of this stipulation.

The predecessor company of the present The Texas Company was originally chartered under the laws of Texas in 1902. The present The Texas Company, respondent herein, was chartered in Delaware in 1927, and is a wholly owned subsidiary of The Texas Corporation.

That its officers are: T. Rieber, Chairman of the Board; W. S. S. Rodgers, President.

That its principal business and executive offices are located at New York City and Houston, Texas.

The Superintendent of its Galena Park Refinery is S. W. Darling; and of its Port Neches Works, Dr. F. S. Dengler.

The present capitalization of The Texas Company is \$250,000,000.00 or more.

The gross receipts of The Texas Company for the last fiscal year were in excess of \$280,000,000.00.

According to its last franchise tax return to the Secretary of State of Texas, covering the fiscal year ending December 31, 1937, 13.809 per cent of its business was reported as intrastate, and 86.191 per cent as interstate in character.

Respondent operates a refinery at Galena Park, Texas, near the City of Houston. At this refinery

a variety of petroleum products are manufactured. Chief among these are gasoline and fuel oils. Gasoline is the principal product, better than 25 per cent of the total throughput of crude being devoted to the production of gasoline.

The crude oil used in the Galena Park Refinery comes principally from producing wells in Texas and New Mexico. Most of the crude moves to the refinery through pipe lines operated by The Texas New Mexico Pipe Line Company, the majority of the stock in which is owned by The Texas Corporation. This company is a common carrier, with tariffs prescribed by the Interstate Commerce Commission.

A negligible amount of crude is received via tank cars.

The average daily throughput of the refinery is approximately 20,000 barrels. Of the finished products, approximately 75 per cent are shipped out of Galena Park via sea-going tankers destined for points outside of the State of Texas.

Unfinished crude distillates are pumped via pipe line to the Port Arthur, Texas, refinery of the respondent company.

The Galena Park Refinery is adjacent to the Houston ship channel, a deep sea outlet to the Gulf of Mexico, and on the company's property are docks at which tankers are loaded.

The Port Neches Works of The Texas Company are located at Port Neches, Texas. The principal

products manufactured at the Port Neches Works are roofing, asphalt, steel barrels, wood barrels and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude is obtained from the States of Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico.

All of the felt, slate, sheet steel and paper is procured from sources outside of the State of Texas.

At the Port Neches docks are berths for sea-going vessels. Most of the roofing and asphalt leaves the Port Neches Works via tanker and/or freighter bound for destinations outside of the State of Texas. All of the barrels and drums manufactured at Port Neches are utilized by the respondent as containers for its own products.

That portion of the daily throughput which is not used in the production of asphalt is pumped, after the primary distillation process, to another refinery of the respondent at Port Arthur, Texas, ten miles away, where the refining process is completed. In finished form, a substantial per cent of the crude oil distillates pumped to Port Arthur eventually reach a destination outside of the State of Texas.

Products of The Texas Company are in part distributed by means of 2,100 wholesale outlets and over 40,000 retailers located in most of the states of the United States. Most of these products carry registered trade-marks.

The Texas Company, the respondent herein, owns, maintains and operates through what is known as its Marine Division, approximately twenty-eight ocean going vessels, having an average capacity of 11,000 tons, all said vessels being registered with the United States Department of Commerce. The respondent maintains its principal office for Marine Division in New York City, New York, and all other offices in Chicago, Ill., Norfolk, Virginia, Los Angeles, California, and Port Arthur, Texas.

Said vessels are used by the respondent in transporting the aforesaid petroleum and all petroleum products of the respondent between the Gulf Ports listed below and the following ports of the United States and foreign countries:

Port Arthur, Houston, Corpus Christi, Texas
New Orleans, La.,
Tampa, Florida,
Claymont, Delaware
Providence, R. I.
Norfolk, Virginia
Portland, Oregon
Seattle, Washington
San Francisco, California
Liverpool, England
Rio de Janeiro, Brazil
Curacao, Dutch West Indies
Mobile, Alabama
Charleston, South Carolina
Bayonne, N. J.

Portland, Maine

Baltimore, Md.

Los Angeles, California

All of said vessels may touch the ports above mentioned, and eventually, and from time to time, touch the port of the respondent Company at Port Arthur, Texas.

THE TEXAS COMPANY,
ALBERT E. VAN DUSEN,

By JAMES H. PIPKIN,
A. E. VAN DUSEN,

Attorney,

JAMES H. PIPKIN.

Attorney.

NATIONAL LABOR
RELATIONS BOARD,

By E. P. DAVIS.

By A. B. MARTIN.

J. P. RONEY

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Give your name and address to the reporter.

The Witness: My name is J. P. Roney. My address is 135 East 42nd Street, New York City. That is my business address.

(Testimony of J. P. Roney.)

Q. (By Mr. Davis) Where do you live, Captain Roney? A. Delanco, New Jersey.

Q. And what is your occupation?

A. General marine manager of the Marine Department of The Texas Company.

Q. Do you have any immediate superiors or any superiors within that department?

A. One, yes.

Q. And who is that? A. Mr. T. Riever.

Q. And what is his position? [14*]

A. He is chairman of the Board of Directors and has immediate executive charge of the Marine Department.

Q. And who is immediately subordinate to you?

A. Mr. Charles Jackson.

Q. Where is he located? A. New York.

Q. I believe you stated that your offices are in New York? A. Yes, sir.

Q. Without naming the number of offices that you have outside of the New York office, do you have in charge of each one of those offices some individual who is subject to your directions?

A. Yes, sir.

Q. Do you have such an office in Port Arthur, Texas? A. Yes, sir.

Q. And who is in charge of the Port Arthur office? A. C. L. Hand.

*Page numbering appearing at top of page of Original Reporter's Transcript.

(Testimony of J. P. Roney.)

Q. And he occupies about the same position that your managers in your other offices occupy?

A. Yes, sir.

Q. Will you please state in your own words as briefly as possible the duties of Mr. Hand?

A. Well, he has the supervision of the operation of the ships, of the shore personnel belonging to the department, the dispatch of the ships, designating, under other instruc- [15] tions, what the ships will load and what their destinations will be.

Q. Now does he have supervision over all Texas Company ships or just those that come into port at Port Arthur?

A. Yes, sir, that is all he has. I might add Houston there too, the few that go to Houston, Texas.

Q. And if any of your ships stop at Corpus Christi, does he have supervision over those?

A. Yes, he would have.

Q. Do some of your ships stop at Corpus Christi, Texas? A. To load, yes, sir.

Q. They load at Corpus Christi?

A. Yes, sir.

Q. And do they unload at Port Arthur?

A. Yes.

Q. Is Mr. Hand also the personnel manager?

A. Yes, of the ships in this district.

Q. Does he have anybody working under him to whom he has delegated authority to hire and fire seamen? A. No, sir, not authority.

(Testimony of J. P. Roney.)

Q. I beg your pardon?

A. He has never delegated any one that authority.

Q. Then Mr. Hand himself does the hiring and firing of seamen who are needed in ports over which he has jurisdiction? [16]

A. No, the masters of the ships; the captains of the ships have that jurisdiction.

Q. Well, does Mr. Hand recommend a seaman to the captain?

A. No. If a seaman is wanted the captain might notify Mr. Hand that a certain grade of man is needed.

Q. And does Mr. Hand get that man then?

A. Yes, sir.

Q. Then Mr. Hand would get that man?

A. Yes, sir.

Q. And then he would report to the captain?

A. He would report to the captain.

Q. And does the captain have to approve that man before he is finally employed?

A. Yes.

Q. Does your testimony in that regard apply both to licensed and unlicensed personnel?

A. Yes.

Q. Are you familiar with the method by which seamen are selected in Port Arthur?

A. I don't know that I am, no.

Q. Do you know from what source they secure seamen? Let's say that the captain needs an able-bodied seaman and he passes that information on

(Testimony of J. P. Roney.)

to Mr. Hand. Then how does Mr. Hand find an able-bodied seaman?

A. I am not positive of this, but I think there is an outfit [17] down here, the Seamen's Church Institute, that we generally employ our men through.

Q. Is that agency independent of The Texas Company? A. Yes, sir.

Q. Do you know by what institution it is maintained, if any?

A. I understand the churches contribute to it. It is a charitable organization.

Q. And then it is your understanding that seamen out of employment register there?

A. Yes, sir.

Q. And Mr. Hand, in the main, calls that place for seamen?

A. Yes, sir, that is my understanding.

Q. What is the average number of employees employed on one of your ships?

A. Well, they vary from 33 men to 42 or 43, depending on the class of ship it is.

Q. Are you familiar with the SS "Nevada"?

A. Yes, sir.

Q. How many men on an average do you employ on that ship? A. 33 on an average.

Q. Then that ship is below the average in size? Is that what you mean?

A. No. We have, oh, about I think it is 16 ships of about that size. [18]

(Testimony of J. P. Roney.)

Q. And these others are larger?

A. Some are and some smaller.

Q. Would you say the "Nevada" is about the average?

A. The average ship, yes, sir.

Q. Now of the personnel on the ship, is the captain in charge? A. Yes, sir.

Q. And who is next in authority after the captain? A. The mate.

Q. The first mate? A. Yes.

Q. How many mates do you have on the average ship? A. Three.

Q. Those are the first, second and third mates?

A. Yes.

Q. Is there any difference in the authority or the duties of the first, second and third mates?

A. Yes, the first mate is immediately under the direction of the master. When the master is ashore the first mate is in charge of the ship.

Q. And in case the first mate was ashore would the second mate be in charge? A. Yes.

Q. And so on down through the third mate?

A. Yes. [19]

Q. Is there ever an occasion when the captain as well as all three mates are off the boat?

A. Never.

Trial Examiner Myers: Well, isn't the second mate in charge of a certain class of employees, like the engineers?

(Testimony of J. P. Roney.)

A. No. The engineers are another matter. The master is in predominate charge.

Q. When all three mates are on the ship as well as the captain what are the duties of the second and third mate?

A. Well, depending. If the first mate is on watch below the second mate will take charge of the deck for discharging or loading, whatever it happens to be.

Q. All right, and if one of the mates happens to be indisposed or off duty or something, then the third mate might be on watch? A. Yes, sir.

Q. And he would be in full charge under those circumstances?

A. Yes, sir, if the master wasn't aboard. Of course if the master is aboard, he supersedes all the rest of them.

Q. Well, is it or not the duty of the mates to be from place to place on the ship all the time or do they have definite assignments to particular positions? A. You mean position on the deck?

Q. Yes.

A. No, there is no particular—if the ship is discharging, [20] why the mate is either on the bridge deck or on the main deck down at the hose.

Q. Well, in case the captain is asleep, is the first mate then in charge?

A. Yes, unless some emergency arose. Then he would call the master.

(Testimony of J. P. Roney.)

Q. Then say one of the other mates has to be down below, then either the second or the third mate is in charge on the deck?

A. Yes. They alternate in watches, you know.

Q. Do you issue definite instructions to your ships' masters as to whether or not they should at all times be in complete charge of the ship or is it left up to their discretion as to whether or not they delegate certain powers and certain duties to the first, second and third mates?

A. No, that is a matter that is understood.

Q. What is the understanding?

A. The understanding is that the master is in command of the ship and if he goes ashore and the mate is aboard he automatically takes charge of the ship.

Q. Well, in case the master is on the ship as well as the mates, just what authority do the mates exercise?

A. I don't imagine—with reference to anything with relation to the ship's business they would call the master on the ship. I don't mean as to discharging seamen, but I mean as to [21] general discharge of the cargo; unloading of the cargo.

Q. In other words, if anything unusual comes up, why, they consult the master before it is done?

A. Yes.

Q. But ordinarily in the routine operation or sailing of a ship the mates may and do issue orders and directions to the seamen working under them?

(Testimony of J. P. Roney.)

A. Yes.

Q. What is a boatswain?

A. Well, he is the—he is what might be designated as a foreman; foreman directly in charge of the sailor personnel.

Q. And that is ordinarily known as the deck crew or deck department? A. Yes. [22]

Q. And he, in turn, is subject to direction by the major companies? A. Yes.

Q. And the boatswain directs the work of the men on the deck in loading and unloading cargo?

A. Yes, and general upkeep of the ship.

Q. And issues orders from time to time for certain things to be done, is that right?

A. Well, he is told what word to pass on to the men. He does not use his own discretion in other words.

Q. Then your testimony is that the boatswain in the main passes orders on to the men that have been passed to him by one of the mates or by the master? A. Yes.

Q. Well, say in case you were out on the high seas and something went wrong and came to the attention of the boatswain, would he out of necessity have to go to one of the mates or to the Master before he could issue orders to the sailors to take care of it?

A. Ordinarily yes. He would report to the mate on watch.

(Testimony of J. P. Roney.)

Q. Say some of the cargo was being washed away or some of the equipment was being washed off the decks in high seas?

A. Well, it wouldn't be necessary for him to report to the mate. He would endeavor to correct it.

Q. He would go ahead and issue orders to take care of what [23] was wrong? A. Yes.

Q. And do you have what is known as quartermaster?

A. Yes, sir, we have them on some of our ships and on some of them we haven't. I would say generally we have quartermasters.

Q. And what are the duties of the quartermasters? A. Wheelsman; helmsman.

Q. In other words, he pilots the ship?

A. No.

Q. What does he do?

A. Why, he steers the ship. There is quite a distinction between steering a ship and piloting a ship. He receives his orders from the officer on watch, whether he should go north, northwest or east, southeast, or the other directions of the compass. He has no discretion, except he obeys orders of his superior officer on watch.

Q. And who is that superior officer?

A. The Master, or one of the three mates.

Q. Is a quartermaster's position considered by seamen a better position than that of an able bodied seaman?

(Testimony of J. P. Roney.)

A. Yes, I would say so. He gets a little more money, which after all is what they are after.

Q. And it is a little easier job?

A. Well, that is according to how you look at it. Standing [24] four hours at the wheel isn't so darned easy. I think the average seaman would rather be a seaman than a quartermaster. I may be mistaken at that.

Q. Isn't it your experience that they have to spend a number of years before they are qualified to be a quartermaster?

A. No. The average A. B. would be qualified.

Trial Examiner Myers: The average what?

A. The average A. B. sailor; able bodied seaman.

Q. (By Mr. Davis) Do able bodied seamen ever relieve the quartermaster at the wheel?

A. Yes. If the quartermaster has to leave for any particular purpose, they would be called.

Q. And then he may pick up any able bodied seaman that happened to be around?

A. Yes.

Q. And does he select that seaman, or does he report to the mate or the Captain?

A. He probably reports to the mate and the mate calls a seaman.

Q. Do you know that is the way it happens?

A. Yes.

Q. And that is all that a quartermaster does? He stands at the wheel for four hours?

(Testimony of J. P. Roney.)

A. Yes, and then he stands four more. He has the same number of hours as the rest, but he stands what you might term the [25] gangway watch when the ship is alongside the dock.

Trial Examiner Myers: Four on and eight off?

A. Yes, sir.

Q. (By Mr. Davis) He doesn't do any work that is ordinarily done by a seaman?

A. No, not necessarily.

Q. Are quartermasters paid on a monthly basis?

A. Yes, sir.

Q. And your seaman, ordinary seaman as well as your able bodied seamen, are also paid on that basis?

A. Yes. They are paid at the monthly rate.

Q. It is understood that when a man takes a position as quartermaster that his job, as you have described it, is all that he will have to do and to stand watch in port as you have just stated?

A. Yes.

Q. In other words, he is not supposed to do any painting; he is not supposed to do any loading or unloading of cargo or anything of that nature?

A. I don't think they are. They used to keep the bridge clean, but I think that is no longer necessary.

Q. Now, you do have on your ship what is known as ordinary and able bodied seamen, do you not?

A. Yes, sir.

(Testimony of J. P. Roney.)

Q. Will you state what the difference between those two is?

A. One of them has an A. B. certificate and the other has an [26] ordinary certificate.

Q. And to get an A. B.'s certificate, does it require a number of years of seamanship?

A. I believe it is three years.

Q. And an ordinary seaman must be somebody that you might have——

A. (Interrupting) It seems to me it is six months. I don't know. I think it is six months. I wouldn't be positive of that, but I think it is.

Q. How do you classify them if you pick one up? Say the first day on a ship?

A. Well, you look at his so-called certificate.

Q. Well, the point is when does he become what you term an ordinary seaman?

A. After he gets his certificate in——

Trial Examiner Myers: How does he get his certificate is what Mr. Davis wants to know.

A. Through the Steamboat Inspection Service.

Trial Examiner Myers: What experience must he have before he gets his certificate?

A. You can't prove it by me. I think it is three years. They have to show three years' experience for an A. B. certificate and they put them through some examination, probably up in the office of the Steamboat Inspection Service. What the examination is I don't know. [27]

(Testimony of J. P. Roney.)

Trial Examiner Myers: Well, now, he is talking about an ordinary seaman.

A. Well, he has to be at least six months at sea, I think. Now, what his examination consists of, I don't know that either.

Q. (By Mr. Davis) Does he have to take that examination before he ever goes aboard?

A. No, before he has his certificate.

Q. Maybe I haven't made myself clear, but I want to know how he is classified within the first six months period. Say you go out here and pick up a man who has never seen the sea before and he gets on this ship, how is he classified before he does qualify as an ordinary seaman?

A. Well, we wouldn't carry him. We wouldn't take a man of that category.

Trial Examiner Myers: Why?

A. Because he hasn't a certificate.

Trial Examiner Myers; Well, what does he have to do before he gets his certificate?

A. I don't know. He has to have his papers before we take him, because we are required to carry a certain percentage of ordinary and AB seamen. I think it is six A. B.'s and three ordinarys, and they have to have a certificate before we can carry them.

Q. (By Mr. Davis) All right. Now, how many general depart- [28] ments do you have on a ship, Captain Roney? Do you have a deck department?

(Testimony of J. P. Roney.)

A. Deck department, engineer department and steward's department.

Q. And I believe your testimony is that the boatswain is in direct charge of the deck department?

A. The personnel of the unlicensed men in the deck department, yes.

Q. And that includes all ordinary and able bodied seamen? A. Yes.

Q. And who has charge of the engineer's department?

A. The chief engineer or the first assistant. The first assistant occupies the same position in the engine room as the mate does on deck.

Q. I see.

Trial Examiner Myers: That is what I meant before.

A. Yes, that is right.

Q. (By Mr. Davis) How many assistants does the chief engineer have? A. Three.

Q. And would you say their authority compared to the authority of the first, second and third mates in the absence of the chief engineer?

A. Yes, as far as the work of the ship is concerned, yes. [29] If they want to discharge a man they report to the Master.

Q. The engineering department is not subject to direction or supervision from the mates? They are only subject to the directions of the Master himself?

(Testimony of J. P. Roney.)

A. Well, I wouldn't say that. If the Master was ashore, why, the mate would be in charge of the ship.

Q. The mate would be in charge and would have authority to issue directions to the chief engineer?

A. Yes, he would have the authority, but I doubt if he would do it, not knowing anything about it. Not knowing anything about it, I doubt if he would tell the chief engineer what mechanical work to do.

Q. But theoretically he is in charge of the ship?

A. Theoretically he is, yes, sir.

Q. From a practical standpoint the chief engineer is always in complete charge, or, in his absence, his assistant, of the engine department?

A. Yes.

Q. And do you have a chief steward?

A. Yes.

Q. And does he have any assistants?

A. Yes, he has a cook and some of the ships three mess men, and some of ships four mess men; some of them a second cook; two cooks. [30]

Q. But the chief steward is in complete charge of the department?

A. No, he is under the Master's direction; not in the cooking of the food, but generally speaking he is under him more directly than he would be under the engineer's.

Q. But is he in charge of the cook and the mess boys and so forth? A. Yes, sir.

Q. That is the chief steward? A. Yes.

(Testimony of J. P. Roney.)

Q. What are the duties, say, of a mess boy?

A. Well, the cabin mess boy waits on the officers' table and ordinarily makes the beds of the officers.

Q. Do you have such a thing as a saloon mess boy?

A. Well, we call them officers' mess boys.

Q. And they wait on the officers' table?

A. On the officers' table, yes.

Q. In other words, they are general handy men around the officers' quarters? A. Yes.

Q. Cleaning up for them, making beds, waiting on the table and so forth? A. Yes.

Q. Now, do you have any other departments that we have not mentioned, Captain Roney?

A. No, sir. [31]

Trial Examiner Myers: Who is in charge of the unlicensed personnel?

A. In direct charge?

Trial Examiner Myers: Yes.

A. Well, the boatswain is the man that issues orders to them, but the Master or the mates.

Q. (By Mr. Davis) Do you have what is known as a pumperman? A. Yes.

Q. Do you have more than one?

A. Two. Yes, we have two.

Q. And are they classified as first and second pumpman? A. Yes.

Q. Does one have any jurisdiction over the other, or any authority over the other?

(Testimony of J. P. Roney.)

A. Not written authority. The first pumpman, of course, is probably a more experienced man than the second pumpman.

Q. And in the ordinary course of their work, why, the first pumpman gives directions, to say the least, to the second pumpman?

A. No, I don't know that they do. The pumpmen are actually under the directions of the engine department. When cargo is being discharged they are under the directions of the deck department, and the deck department is responsible for the loading and discharging of the ship. [32]

Q. Now, that means that they are at all times while at sea subject to the directions of the chief engineer, or his assistant in his absence?

A. Yes, the engine department.

Q. And while they are in port they are subject to directions of the boatswain?

A. No, no; one of the mates or the master. That is when the ship is loading or discharging.

Q. What does the pump man do? What is the nature of his work?

A. Well, he is what you might term a machinist that moves valves and replaces valves of his cargo pumps and in port, why, of course, he handles the valve for discharging; loading or discharging.

Q. Do you have wireless operators on ships?

A. Yes.

Q. One on each ship?

A. One.

(Testimony of J. P. Roney.)

Q. And is he under the immediate supervision of the master or——

A. (Interrupting) The master.

Q. Do you have a man employed in Port Arthur by the name of Meyers?

A. I believe there is.

Q. Do you have more than one man by the name of Meyers employed? [33]

A. Yes, I am not positive of that. I think one is named Myer and the other is named Meyers.

Q. What are the duties of Mr. Meyers?

A. Well, he is the man to contact the Seamen's Church Institute, for instance, to pick up a man or men.

Q. Is his initial E. Meyers?

A. Offhand I wouldn't be able to say.

Q. Is it the Mr. Meyers who is commonly known as Two Gun Meyers?

A. You can't prove it by me. I never heard him called that. I never say him carrying any guns. He never pulled one on me anyway.

Q. What title does this Mr. Meyers have?

A. I don't think he has any title. His duty is to secure men.

Q. I believe you testified that you didn't know his title? A. I don't think he has a title.

Q. But in the main his duties are to secure additional seamen when they are needed?

A. Yes.

(Testimony of J. P. Roney.)

Q. Do you know offhand any other duty that he has besides that?

A. I don't know of anything else that he does.

Q. Now, does Mr. Hand have any assistance also by the name of Myer or Meyers? [34]

A. Yes.

Q. Is it Meyers?

A. Whichever it is, yes. He has nothing to do with the men. He is the loading and discharging man under Mr. Hand. He has no title either.

Q. You mean by that that he has supervision of loading and discharging of ships?

A. Yes, loading and discharging of cargoes, yes.

Q. Now, is he in charge of the seamen while that is being done or are they still under the supervision——

A. (Interrupting) Still under the supervision of the mates.

Q. In other words, they are at all times under the supervision of the master or one or more of the mates? A. Yes.

Mr. Davis: I believe that is all.

Cross Examination

Q. (By Mr. Van Dusen) Mr. Roney, Mr. Hand is in charge of your so-called southern division?

A. Yes, sir.

Q. And he takes his instructions from you?

A. Yes, sir.

(Testimony of J. P. Roney.)

Q. Now, referring to Mr. Hand as personnel manager, you mean that he is in charge of the Port Arthur office and you don't mean that he determines which seamen are put on the ships? That is up to the captain, isn't it? [35]

A. That is up to the master, yes, sir.

Q. Now, these seamen, that you say are selected on each trip, signed shipping articles, isn't that correct?

A. That is correct.

Q. And these shipping articles provide for discharge at a coastwise port or at Port Arthur?

A. Yes, sir.

Q. Within a specified time? A. Yes, sir.

Q. When those shipping articles terminate and there is a discharge, the discharge is filed, isn't it, with the Bureau of Navigation in Washington; that is, a copy is filed?

A. Yes, a copy is sent. Coastwise articles as well.

Q. And a copy also to the collector of customs?

A. No, I don't think so. I don't think the collector of customs has anything to do with that phase of it.

Q. Well now, in referring to hiring and firing, what you mean is that the shipping articles come to an end and seamen are discharged under those articles? A. Yes.

Q. And it is a question then of whether you take a man on new articles or not, is that correct?

A. That is it, yes, sir.

(Testimony of J. P. Roney.)

Q. Now, about this boatswain, are you required by law to have a boatswain? [36]

A. No, you are not.

Q. He is merely A.B. seaman who is selected for his particular work, is that correct?

A. Yes, I don't think he even has to be an A.B.

Q. Is that so.

A. You are not compelled to carry a boatswain by law.

Q. Now, the quartermaster, his duties primarily are to steer the ship? A. Right.

Q. Isn't it true, however, that the captain may, if he wants to, give him other duties to perform.

A. Well, I doubt that.

Q. I mean if the captain considers it necessary.

A. You see, the quartermaster will work his eight hours at the wheel.

Q. Well, assuming that the captain gave him other duties, of course, the captain would have to relieve him?

A. He would do it, yes, sir.

Trial Examiner Myers: Then he would no longer be a quartermaster?

A. Well, that is his title.

Trial Examiner Myers: Well, if he is going to be an ordinary seaman he wouldn't be a quartermaster, would he?

A. Well, it just depends. He has eight hours a day to work. I understand he is watching the wheel for eight hours. If [37] the captain wants him to

(Testimony of J. P. Roney.)

do anything else and the quartermaster is more or less agreeable to it, he would give him overtime for it. [38]

Q. (By Mr. Van Dusen) But the captain may, if he wants to, give him other duties to perform?

A. Yes.

Trial Examiner Myers: That is if the quartermaster is willing?

Q. Yes. The master has entire charge; entire charge of the chief engineer too, as far as that is concerned, but he wouldn't tell the chief engineer what to do with his machinery.

Q. (By Mr. Van Dusen) Now, Mr. Roney, in referring to these titles as A. B. seamen and ordinary seamen, although these men have general duties to perform, the captain nevertheless can vary those duties if he considers it necessary, is that so?

A. Yes, sir.

Q. In other words, he is in complete command of the ship? A. Yes.

Q. Now the chief engineer, you say he is in charge of the engine department. You mean the mechanical operation of the ship?

A. Yes, sir.

Q. The power plant of the ship? A. Yes.

Q. As far as the general administration of the ship and orders is concerned, the men under the engineer are subject to the captain and the first mate, isn't that correct? [39]

A. As well as any other man on the ship.

(Testimony of J. P. Roney.)

Q. Now just one more question: This man Meyers who selects seamen, he merely gets the type of seamen that the captain wants?

A. Yes, sir.

Q. He can't tell the captain what seaman to take?

A. No.

Q. He can't tell the captain what seaman not to take?

A. No.

Q. He is merely a placement man for the captain, isn't that correct?

A. That is it.

Mr. Van Dusen: That is all.

Redirect Examination

Q. (By Mr. Davis) Do you know how seamen are selected at this Seamen's Institute; whether or not this Mr. Meyers just goes down there and picks out a man or whether a list of names is called off?

A. I don't know.

Q. Now will you state the different types of shipping articles?

A. Yes. They have a shipping article that the men sign when they are in coastwise voyages and when they sign for a foreign voyage before the United States Commissioner it is a different type of article, but there is very little difference [40] in the wording.

Q. For foreign voyages they have to sign those before a Shipping Commissioner?

A. A Shipping Commissioner, yes, sir.

(Testimony of J. P. Roney.)

Q. And they don't have to on coastwise voyages?

A. No.

Q. Is that true also of intercoastal voyages?

A. No. Intercoastal is signed before a Commissioner.

Q. Intercoastal and foreign? A. Yes.

Q. What is the custom as to when a seaman is advised that his shipping articles will not be renewed?

A. Ordinarily when the man—it may be two or three days before the termination of the articles or it may be when the man is being paid off. Ordinarily they give that advice some two or three days before when on the voyage. Our custom is to square up with our crew at Port Arthur or some other southern port like Houston.

Q. Do they have to sign separate shipping articles for each voyage? A. Yes.

Q. And that is regardless of whether it is foreign or coastwise? A. Yes.

Q. And then it is the usual thing for masters of your ships [41] to advise them a day or so before they get into port? A. Yes.

Q. And is it usual or unusual for them to sign new shipping articles before they get into port?

A. No.

Q. Well, is it usual for them to do that? When do they ordinarily sign the new articles?

(Testimony of J. P. Roney.)

A. They ordinarily sign when the men are paid off. If they are going to continue on the ship, then they sign new articles.

Q. Before they get off the ship? A. Yes.

Q. Who signs those shipping articles?

A. Who signs them?

Q. Yes, sir.

A. The men themselves and the master.

Q. The men themselves and the master of the ship? A. Yes, sir.

Q. Does anybody else besides the master sign them? A. No, sir.

Q. Does the Commissioner have to sign them when they are signed before him?

A. Yes, sir, the Commissioner signs them.

Q. Could you obtain for us, Captain Roney, a copy of the coastwise shipping articles and also the foreign shipping [42] articles so we will know what each of them shows?

A. I will produce the coastwise and I expect the Commissioner will give me a copy of the other. I am quite sure he will.

Mr. Van Dusen: I will produce a copy of the coastwise articles and if we can get a copy of the Commissioner of the others we will produce them.

Mr. Davis: All right. Thank you.

Recross Examination

Q. (By Mr. Van Dusen) Just this one question: What do you mean by "intercoastal"?

(Testimony of J. P. Roney.)

A. Well, say, from Port Arthur to Los Angeles.

Q. Does the Commissioner have to sign them?

A. Yes, sir.

Q. But you don't mean that he has to sign articles for trips up the Gulf Coast? A. No.

Trial Examiner Myers: Intercoastal is different from coastwise? A. Oh, yes.

Q. (By Mr. Van Dusen) You mean east and west coast?

A. Yes, sir, that is it. In other words, through the canal, the Panama Canal, is intercoastal.

Q. Trips to the west coast, that is intercoastal?

A. Yes, sir.

Q. And if the ship stays on the east coast that is coastwise? [43] A. Coastwise, yes, sir.

Q. If it is an intercoastal voyage you need a Commissioner to sign? A. Yes, sir.

Trial Examiner Myers: When the Captain asked Mr. Hand for some men and Mr. Hand sends some men to him, isn't it usual that the captain accepts the men that Mr. Hand sends him?

A. Not necessarily.

Trial Examiner Myers: But I mean as a usual run of things. A. Oh, yes.

Trial Examiner Myers: And the same applies to Meyers? That is when Meyers picks some one?

A. Yes, sir.

Trial Examiner Myers: The captain ordinarily accepts them?

(Testimony of J. P. Roney.)

A. We ordinarily sign men with a certificate. We have to.

Trial Examiner Myers: You depend more on the certificate than on the selection of Mr. Meyers or Mr. Hand?

A. When you ship a man you can't tell anything about his qualifications.

Trial Examiner Myers: Do you give any preference when you hire a man to men who have been former Texas Company seamen?

A. Yes. If a man has been with you before and he is a good [44] man, you give him another opportunity.

Trial Examiner Myers: Any other questions?

Mr. Davis: I think I have just one question.

Redirect Examination

Q. (By Mr. Davis) Captain Roney, say a man is going to be discharged or is being considered for discharge, would it be usual or unusual for the captain of the ship to take that up with Mr. Hand in case they were going to dock at Port Arthur or would he just go ahead and use his own discretion on that?

A. I couldn't answer that. I would say he would say he would use his own discretion.

Q. But you don't know whether or not—

A. (Interrupting) I don't know positively, no.

Q. Of course the captains or the masters are

(Testimony of J. P. Roney.)

subject to the direction of Mr. Hand in case they are in Port Arthur here, is that right?

A. Yes.

Q. Let's say that the master of a ship didn't want to discharge a seaman and Mr. Hand did want him discharged, what would happen?

A. The man would remain aboard the ship.

Q. In other words, the captain has the final say?

A. Yes.

Q. Notwithstanding Mr. Hand's authority?

A. Yes. [45]

Q. And that is true even though the captain or master of the ship is subject to the authority and direction of Mr. Hand?

A. Yes. I can't imagine Mr. Hand requesting anybody to be discharged. The captain knows the men's qualifications. Mr. Hand wouldn't.

Q. But if he did do it——

A. (Interrupting) I don't know. There are too many if's there for me. Mr. Hand doesn't know anything about the men. Of course if Mr. Hand came right out and demanded the man's discharge, he being the captain's superior, probably the man would be discharged, but I can't imagine Mr. Hand doing it. Personally, I wouldn't do it and I can't imagine Mr. Hand doing it.

Q. In other words, if the captain wanted to hold his job and he was directed by Mr. Hand to fire him, he would go ahead and fire him, even though it was against his better judgment?

(Testimony of J. P. Roney.)

A. Yes, he might, yes, sir.

Mr. Davis: I believe that is all.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Roney, Mr. Hand has no authority to discharge a captain, has he?

A. No.

Q. That rests with your office, isn't that so?

A. Yes. [46]

Q. And anything that Mr. Hand said to the captain would of course be in the way of a recommendation, isn't that so? A. Yes.

Q. And the captain is not compelled to discharge a man if he doesn't want to, even if Mr. Hand says so? A. No.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Who assigns the masters to the various boats? A. I do.

Trial Examiner Myers: In New York?

A. Yes, sir.

Trial Examiner Myers: Is that all, Mr. Davis?

Mr. Davis: One more hypothetical question.

Redirect Examination

Q. (By Mr. Davis) Assuming that Mr. Hand here wanted somebody discharged and the captain on the ship didn't want to discharge that man, Mr. Hand takes the matter up with you, would you ordinarily accept the recommendation of Mr. Hand or that of the master of the ship?

(Testimony of J. P. Roney.)

A. The master, unless there were some very good reasons back and forth between them. Of course that is something else.

Mr. Davis: That is all.

Mr. Van Dusen: That is all. [47]

Trial Examiner Myers: Thank you, Mr. Roney.

(Witness excused.)

[Board's Exhibit No. 6 (Constitution of the National Maritime Union of America) and Board's Exhibit No. 7 (Standard Tanker Agreement of the National Maritime Union) introduced at the opening of proceedings on Tuesday September 13, 1938, are set out at the end of all of the testimony. See pages ~~1608~~ and ~~1676~~ of this printed record.] [48]

J. GORDON ROSEN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination [124]

Trial Examiner Myers: Give your full name and address to the reporter.

A. J. Gordon Rosen, 202 Fifth Street, Port Arthur, Texas.

Q. (By Mr. Martin) Mr. Rosen, for the record, will you state your occupation?

A. Seaman.

(Testimony of J. Gordon Rosen.)

Q. How long have you been a seaman?

A. About ten years.

Q. Are you an able-bodied seaman?

A. Able-bodied seaman.

Q. How long have you been able-bodied seaman?

A. Well, I have discharges six years ago, definitely.

Q. That is, you have been able-bodied seaman at least six years?

A. I have.

Q. During the time you have been on the sea have you worked for a number of companies?

A. I have.

Q. About how many?

A. Ten or more.

Q. Have you worked for The Texas Company?

A. I have.

Q. When did you first work for The Texas Company?

A. On or about October 24, 1935.

Q. On what ship? [125]

A. SS "Nevada".

Q. When did you leave the SS "Nevada" at that time?

A. On or about February 2, 1936.

Q. When did you next ship on a Texas Company ship?

A. On or about June 30, 1937.

Q. On what ship?

A. SS "California".

Q. And when did you leave the SS "California"?

A. On or about September 18, 1937.

Q. And when did you next ship with The Texas Company?

A. On or about January 10, 1938.

Q. On what ship?

A. SS "Nevada".

(Testimony of J. Gordon Rosen.)

Q. And when did you leave the SS "Nevada" that time? A. On or about April 19, 1938.

Q. Have you ever worked for The Texas Company since the last date you stated?

A. Yes, I have.

Q. When?

A. I shipped on the SS "Washington" on or about June 1, 1938; was discharged on or about, that is, fired—I was not discharged; I was fired on or about July 14, 1938.

Q. Since that last date you mentioned have you worked for The Texas Company?

A. No, I have not. [126]

Q. Have you ever worked for The Texas Company except on the three ships you have mentioned at the four different times you mentioned?

A. No, I have not.

Q. Mr. Rosen, are you a member of the National Maritime Union? A. I am.

Q. When did you become a member?

A. Since its inception, on or about November 1, 1936; and an official member from 1937.

Q. To clarify the record, do I understand that you were a member of that group commonly known as the rank and file group who were active as early as late in 1936? A. I was.

Q. Which group became officially the National Maritime Union in May, 1937?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. And you became a member in May, 1937, at its inception? A. Yes, sir.

Q. Now, Mr. Rosen, for the record, we shall return to your first sailing with the "Nevada" at a later time in the hearing. When you hired to ship on the SS "California" in June of 1937, did you sign articles? A. Yes, I did.

Q. Where did you sign those articles? [127]

A. In the captain's office.

Q. Who was captain of the SS "California"?

A. I believe his name is Peterson. I don't know his first name.

Q. When you signed articles, I take it you signed your name?

A. I produced my certificate of efficiency as able seaman, life boat ticket, and my certificate of identification. My pictures were on all three, with my name and address. [128]

Q. And your name? A. And address.

Q. You say it was in the captain's quarters. Who was present at the signing of those articles?

A. Myself and the captain.

Q. Anybody else?

A. Not that I remember.

Q. Do you remember whether on that occasion the captain called you by name?

A. He asked me where my address was, locally, and I said that was my permanent address, in Wisconsin.

Q. The address you gave the court reporter?

(Testimony of J. Gordon Rosen.)

A. No. That was my mother's address.

Q. Now, at the time you signed on the S. S. "California" were you bald-headed?

A. Yes. I have been that way for approximately six years.

Q. And when you signed on did you have your hat on or off?

A. Off. As a matter of respect to the captain, I always take my hat off in his office.

Q. Captain Peterson is not blind?

A. His eye sight has to be good, because the steamboat inspectors check up on that every so often, in order to get their ticket renewed, you see.

Trial Examiner Myers: That was not the question he asked you. [129]

A. He had very good eye sight.

Q. (By Mr. Martin) *Or* or about the first day that you were on the "California" did you have a discussion with the boatswain or the mate?

A. Yes. I asked the boatswain where the mate was, and told him I was due a leave. He pointed out the mate, Mr. Baldwin. I went up to see the mate, and I said: "I am the new A. B. sent down by the Seamen's Institute." He said: "Are you ready to turn to right away for inspection?" And I said: "Yes." And he said: "All right." And then he said: "Just a minute. There is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business."

(Testimony of J. Gordon Rosen.)

Q. Who said that?

A. Mr. Baldwin, chief mate.

Q. The Chief mate? A. Yes, sir.

Q. For the purpose of the record, will you state the name of the boatswain please?

A. Leslie Thompson.

Q. Leslie or Lester? A. Leslie. [130]

Q. Do you remember anything else said at that conversation?

A. He just told me to go change my clothes and turn to that morning which I did, but something else happened that day, however.

Q. What happened that day?

A. Well, that same morning another sailor came aboard.

Q. Who was that? A. James Blasingame.

Q. Did you hear any conversations between James Blasingame and any officer of the Company on deck?

A. Not of any officer of the Company. I saw James Blasingame talking to the mate and later on he went back in the forecastle and the members of the deck crew were assembled there and James Blasingame asked us——

Mr. Van Dusen: Just a minute. I object, because this is not in the presence of any officer of the ship. It is hearsay; not binding on the respondent. He said James Blasingame went back and talked to the members of the crew.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I overrule the objection.

Mr. Van Dusen: Take an exception.

A. (Continuing) James Blasingame said, "Did that mate say anything to you fellows when you came aboard the ship?" Another fellow by the name of Meyers——

Mr. Van Dusen: The same objection to what Meyers said. [131]

Trial Examiner Myers: Overruled.

A. (Continuing) He said, "Yes, the mate said something to me."

And Blasingame said, "The mate told me that he wouldn't stand for any drunkenness on this ship, missing watches, and any agitating the crew on union matters."

Myers said, "He told me the same thing," and another A.B. by the name of Vest said, "The mate told me the same thing."

Mr. Van Dusen: I object to that. It is the same thing.

Trial Examiner Myers: I understand that you have an objection to this whole line of testimony.

Mr. Van Dusen: Thank you.

Trial Examiner Myers: I overrule the objection and ask the reporter to please note an exception to my ruling.

Q. (By Mr. Martin) Mr. Rosen, you said that you were hired and that you shipped on the "California" on June 30th, 1937. During the month of

(Testimony of J. Gordon Rosen.)

July, 1937, and August, 1937, and the first week in September, 1937, did you engage in any union activities? A. Yes, I did.

Q. What did you do?

A. I discussed amongst the crew the advantages of the union, asked them to come up to the Union and join the Union, I went ashore and brought literature aboard the ship, Communi- [132] cations, the official organ of the Union, The Pilot, and I brought several of the members up to the Union Hall to join.

Q. Several new men who came aboard the ship?

A. Yes, sir.

Q. You invited them——

A. (Interrupting) To join the Union.

Q. And convince them that they should join the Union? A. Yes, I did.

Q. By peaceful means?

A. By peaceful means at all times.

Q. What, if anything, happened on September 7th, 1937?

A. The mate came up and tried to tell us that the over time pay we were to get for cleaning tanks was a certain amount. I told him that the difference between that amount and the Union scale was so greatly different it wasn't even a compromise.

Trial Examiner Myers: What is this mate's name?

A. The mate's name was Dave Rosen.

Q. (By Mr. Martin) Was he then the first mate?

(Testimony of J. Gordon Rosen.)

A. He was the regular chief mate.

Q. Mr. Baldwin was no longer chief mate?

A. Mr. Baldwin was relieving as chief mate. He later went as second mate.

Q. That is, when you boarded the boat Mr. Baldwin was the [133] mate, the chief mate?

A. He was.

Q. And at this time we are now referring to, Mr. Baldwin was the second mate and Dave Rosen was the first mate? A. That is right.

Q. Now, at the time you spoke to Chief Mate Rosen about wages for tank cleaning, were you a delegate speaking for the members of the crew?

A. At that time the condition on the ship did not allow us to have delegates.

Q. Either before or after the conversation with Chief Mate Rosen, did you participate in a meeting of the crew?

A. When I had this conversation with the mate I told him if that is all they could afford to give us, I said, "I am going to quit," and James Blasingame told him the same thing, "I am going to quit."

He didn't say anything. He informed the rest of the members of the crew the amount they would get. I went back aft and started packing up my clothes. The rest of the crew came back. I had a conversation. We had a meeting in the deck fore-castle. The rest of the crew was very much dissatisfied with the rate of pay they were supposed to get. I told them, "The only thing we can do then

(Testimony of J. Gordon Rosen.)

is to tell the Captain that if he don't pay us the amount we feel justified in asking, we are all going to quit." [134]

They said, "All right. You go up and tell the Captain that," which I did.

Q. Did they tell anybody else to go up and tell the Captain? A. James Blasingame.

Trial Examiner Myers: Did you go alone or did this other gentleman go with you?

A. We both went up at the same identical time.

Q. (By Mr. Martin) And you told that to the Captain?

A. Yes. On the way we met the mate.

Q. Was anybody with the Captain other than you two when you talked to him?

A. The mate, Dave Rosen, was in the Captain's office at that same time.

Q. Did you tell Captain Peters and Mate Dave Rosen at that time in the Captain's office that you were representing all the members of the crew as you spoke?

A. No, sir. He asked us——

Q. He asked you what?

A. "If the rest of the crew want the same thing you do."

I said, "Yes. If they don't get it, they told us they would quit."

Q. Did he understand from your words that you were saying that you were representing the rest of the crew in your conversations?

(Testimony of J. Gordon Rosen.)

A. That is one of the first things the Captain asked me. [135]

Q. If you were representing the members of the crew?

A. He asked me if the rest of the members of the crew wanted the same things I was asking for and I said, "Yes. We were sent up here to speak for the crew."

Q. You did say that? A. Yes.

Q. During that conversation, did the Captain or the mate ask you if you were elected?

A. They never did ask us.

Q. To represent the crew?

A. They didn't ask us if we were elected to represent the crew. [136]

Q. Did they ask you for any credentials showing that you were representing the crew?

A. No, sir.

Q. Did they ask you for any written credentials?

A. No, sir.

Q. Did either of them question your authority to represent the crew in that conversation?

A. Not directly.

Q. In any way? A. Yes.

Q. What did they say?

A. They told me that The Texas Company treated their employees in a fair manner and they gave them time off instead of overtime and they thought that the crew would be well satisfied with that.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Time off with pay?

Q. (By Mr. Martin) Time off with pay?

A. No, sir, time off without pay.

Q. Did either the captain or the mate ask you if you had authority from the home port of the ship or from the National Offices of the National Maritime Union to represent the men in this conversation?

A. They didn't care anything about the union on that ship.

Q. Their ears were closed to your remarks?

A. They were. [137]

Q. Did you try to make any remarks as to your authority from the home office? A. Yes, sir.

Q. From the home office?

A. From the National Maritime Union.

Q. Mr. Rosen, while you were on the "California" after September 7—I think you left the "California" on September 19—did you participate in any other union activities?

A. Yes, I did.

Q. What did you do?

A. There was another sailor on there by the name of Smith, an A. B., who made two trips. He joined the ship the second trip I was on there. The first trip he was on the 12:00 to 4:00 watch. We were very active in discussing the union amongst the rest of the members. The second trip he was placed on my watch, which was the 8:00 to 12:00 watch. Going north to Hudson River ports two of

(Testimony of J. Gordon Rosen.)

the A. B.'s quit; one of them's name was Buck O'Hara. He went up to the mate to get his money and the mate told him, "Give my regards to Moscow."

Then the boatswain asked this man Smith to go on the 12:00 to 4:00 watch.

Q. Which was your watch? A. No, sir.

Q. That was not your watch?

A. No, sir. The man Smith—this A. B., Smith said—— [138]

Q. (Interrupting) Just a minute. Was this in your presence?

A. In my presence and in the boatswain's presence, Leslie Thompson.

Q. And in the presence of any officer of the ship?

A. Well, the boatswain is an officer technically.

Mr. Van Dusen: I object. It is hearsay; not a conversation had in the presence of an officer of the ship.

Trial Examiner Myers: Overruled.

Mr. Van Dusen: What was the ruling?

Trial Examiner Myers: Overruled.

Mr. Van Dusen: Exception.

Trial Examiner Myers: Hereafter, Mr. Van Dusen, let him answer the question in full and you can move to strike out the answer.

Will you read the question and answer so far, Mr. Reporter?

(Testimony of J. Gordon Rosen.)

(The last four questions and answers were read.)

A. (Continuing) "If I go on the 12:00 to 4:00 watch I will be losing on the transaction. I don't want to go on the 12:00 to 4:00 watch with that union hating Baldwin.

Trial Examiner Myers: When he said, "Losing on the transaction," did he mean he would lose some pay?

A. He would lose time. You see there is a difference of two hours he would lose on that trip alone; besides the 12:00 to 4:00 watch is not considered as good as some of the other watches. [139]

Trial Examiner Myers: I am talking about pay. Would he lose any pay?

A. Not that I know of.

Trial Examiner Myers: But he would have to work two hours longer, is that it?

A. He would on that particular trip.

Q. (By Mr. Martin) Throughout this period that you were on the California—

A. (Interrupting) You asked me about my own activities?

Q. Yes.

A. Then I told the boatswain that I wouldn't—the boatswain asked me if I would take the 12:00 to 4:00 watch instead of Smith. I said, "No, I wouldn't take this watch because as a union man I felt that I had to stick up for a union brother. If he refused, I refused."

(Testimony of J. Gordon Rosen.)

Q. Was any officer of the ship present during that conversation?

A. No, but Leslie Thompson went up and notified the second mate.

Mr. Van Dusen: I move to strike out that testimony on the ground that no officer of the ship was present.

Trial Examiner Myers: I will grant the motion as to the last part of the sentence, but otherwise it is denied.

Q. (By Mr. Martin) After this conversation did you see Leslie Thompson going towards the mate?

[140]

A. Yes, sir.

Q. Did you hear him talking with the mate?

A. No, sir.

Q. At this conversation that you had with Smith did Thompson make any remarks?

A. He didn't say anything to either of us except to ask us if we would go on the 12:00 to 4:00 watch.

Q. He didn't say, "I am going to see the mate?"

A. No. He said, "I will have to tell the mate."

Q. Well, now, did he or did he not say that?

A. He said, "I will have to tell the mate."

Q. You heard him say that?

A. I heard him say that.

Q. At any time subsequent to this conversation did either the mate or Thompson make any statements to you with respect to it?

(Testimony of J. Gordon Rosen.)

A. That word "subsequent," I don't know——

Q. After the conversation?

A. After the conversation? No, they didn't say anything to me, but they fired Smith.

Mr. Van Dusen: I move to strike that out. That is a conclusion.

Mr. Davis: It is not a conclusion that he was fired. He didn't say they fired him for not working on that watch.

Trial Examiner Myers: Read the question and answer [141] again.

(The last question and answer were read.)

Trial Examiner Myers: I will strike out the words "but they fired Smith." Otherwise the motion is denied.

Q. (By Mr. Martin) How long did Smith remain on the ship after this conversation?

A. He got fired in Port Arthur as soon as he got back.

Mr. Van Dusen: The same motion.

Trial Examiner Myers: You mean to strike out?

Mr. Van Dusen: Yes.

Trial Examiner Myers: Motion granted.

Mr. Rosen, will you please answer the question. Don't add anything. The question is: How long.

A. The exact number of days?

Q. (By Mr. Martin) Approximately; as near as you can tell?

A. As far as I know approximately ten days.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: He finished the cruise is that it?

A. That particular trip, yes.

Trial Examiner Myers: And they came back to the port? A. Yes.

Q. (By Mr. Martin) Was Port Arthur the first port the ship touched at after that conversation?

A. It was the first port, yes, sir. [142]

Q. Mr. Rosen, I want to go back just a minute. You said that you told the captain when you went up to talk about the wages for tank cleaning; that is, when you and Blasingame went together; that you were representing the men in the crew. Did you inform him that you were representing not only union men but also non-union men?

A. I said that we were speaking for the whole deck force.

Q. And the whole deck force did include some non-union men along with the union men?

A. Yes, sir.

Q. You have mentioned that you had a number of conversations with the captain, the two first mates, and the boatswain during the time that you were on the "California" relating to what you thought were union activities. Do you remember any other conversations relating to union activities?

A. Yes, sir.

Q. When you were speaking on behalf of the crew?

A. Talking about union matters.

(Testimony of J. Gordon Rosen.)

Q. Relate that or those.

A. Well, I had a conversation with the third mate or third assistant engineer—the second assistant engineer and the relieving third assistant engineer and the radio operator.

Q. Four people?

A. Just discussing union matters.

Q. You mean just general discussions? [143]

A. Yes, sir.

Q. At different periods during the voyage?

A. Continually during the voyage.

Q. Continually? A. Yes.

Trial Examiner Myers: You mean during your free moments?

A. During my period when I was off watch.

Q. (By Mr. Martin) How many hours a day are you off watch? A. Normally eight.

Q. No. The number of hours you are off watch.

A. Normally four on and eight off.

Trial Examiner Myers: Sixteen, isn't it?

A. Yes, but not more than eight at one time, except in port.

Q. (By Mr. Martin) In other words, sixteen hours a day on the boat——

A. (Interrupting) Of the 24.

Q. (Continuing) When you don't have to work?

A. Yes, sir.

Q. During your period on the "California" did you have a nickname? A. Yes, sir.

Q. What was it? A. Curly.

(Testimony of J. Gordon Rosen.)

Q. In your conversations with the boatswain did he call you [144] Curly? A. Yes, sir.

Q. Did the third mate address you as Curly?

A. Not that I remember.

Q. Did he address you as Baldy? A. No.

Q. How did he address you? A. Rosen.

Q. And the second mate? A. Rosen.

Q. The first mate? A. Rosen.

Q. The captain? A. Rosen.

Q. While you were working on the "California" were you assigned any special duties that were not assigned to other able-bodied seamen aboard at that time? A. Yes, sir.

Q. Will you enumerate one of those?

A. One instance was when the radio halliard, the halliard for the radio antenna, was being replaced. The mate dragged out some nine stranded runner wire. He didn't even know where he had got it from. And he asked the boatswain to weave in a new halliard. He asked the boatswain if there was any of the A. B.'s that could splice wire. The boatswain said, "Yes, I [145] think Curly here can do a good job on it."

Q. Did you hear that conversation?

A. I did, yes, sir.

Q. You were present? A. Yes, sir.

Q. Go ahead.

A. Then I proceeded to splice the one eye here around the thimble, got it up, rigged it up, had to

(Testimony of J. Gordon Rosen.)

weave the other end through a pulley, and then splice the other end on deck to the notch on the gear rod, and by that time it was 12:00 o'clock and I was off watch or going to go off watch. The mate, Mr. Baldwin said, "Rosen, I would like you to come out this afternoon and finish this splicing. I wouldn't trust any of the other fellows back there to do it. If you do it I will give you time off when we get back to Port Arthur."

So I came back in the afternoon and finished the splicing. He was standing there with the third mate, Monroe, the radio operator, Brody, and the mate said, "That is a good job."

And the third mate said, "Yes, that is a pretty good job."

And the radio operator said, "That is going to last a long time."

And any time they had any splicing to do on any of the manila the boatswain always detailed me to do the splicing.

In dry dock immediately after we had the discussion with [146] the mate and the captain and received our additional compensation the boatswain told me to go out on the dock and shorten up that sling. "I don't think any of those fellows who are supposed to be A. B.'s on here know how to do that."

And still while in dry dock he told me to "Go up there and change the blocks on the wireless;" that the people in the dry dock said they couldn't

(Testimony of J. Gordon Rosen.)

do it and "we will have to do it. I want you to go up there and do it."

Q. Were you assigned any other special duties that were not assigned to the other able-bodied seamen? A. I don't remember of any.

Trial Examiner Myers: Did you do the special assignments?

A. Yes, sir. I went up, worked about all morning changing that over. It was quite complicated.

Q. (By Mr. Martin) Did you complete the task?

A. I did, satisfactorily.

Q. Did you hear any comments on that job?

A. No, sir.

Q. You were not complimented?

A. The mate was pretty mad at me then.

Q. For something else? A. Yes, sir.

Q. But despite the fact that he was mad, he asked you to do the job? A. Yes, sir. [147]

Q. And you did it? A. Yes, sir.

Trial Examiner Myers: Which mate was this?

A. The first mate, Dave Rosen.

Trial Examiner Myers: The first mate?

A. The regular first mate, yes, sir.

Q. (By Mr. Martin) During your sojourn, and that means your voyages, on the "California" was your work in any way criticized by any of the officers? A. Never.

Trial Examiner Myers: Adversely criticized you mean, don't you?

Mr. Martin: Adversely.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Was it ever adversely criticized?

A. I never heard one single bit of criticism of my work on the "California."

I would like to make a correction on that with reference to if I was ever given a special assignment. I was appointed temporary boatswain in Leslie Thompson's place in one instance. [148]

Trial Examiner Myers: Did the mate know that you were acting?

A. The mate gave me direct orders, the same as he would the boatswain, to turn the gang to and what he wanted done. The mate that was there at that time was Dave Rosen.

Trial Examiner Myers: Is he any relative of yours?

A. I hope not.

Trial Examiner Myers: Well, is he?

A. No, sir.

Q. (By Mr. Martin) Mr. Rosen, you have testified that you left the ship on or about December 19, 1937. Will you please relate any conversations you had with the captain, first, second or third mate or the boatswain at that time.

A. When we got into the Port Arthur dock the boatswain, Leslie Thompson, told me, "The mate told me you are fired."

Mr. Van Dusen: I move to strike it out. It is irrelevant, not binding on anybody.

Trial Examiner Myers: I will overrule it.

(Testimony of J. Gordon Rosen.)

A. (Continuing) "Your money is waiting for you."

I said, "I guess you know what I am getting fired for."

He said, "Yes. I feel pretty bad about it. I would quit myself. I ought to quit myself."

Q. (By Mr. Martin) Who said this?

A. Leslie Thompson.

Mr. Van Dusen: I move to strike it out. [149]
Trial Examiner Myers: Said it to you?

A. Said it to me.

Mr. Van Dusen: I move to strike that statement out.

Trial Examiner Myers: I overrule it.

Mr. Williams: Your Honor will recall the testimony of Mr. Roney as to the authority of a boatswain. He said he is simply a foreman and has no authority on the vessel and that it is frequently an A. B. who acts as boatswain.

Trial Examiner Myers: He also said that he would act somewhat like a foreman.

Mr. Williams: Like a foreman, and that he had no authority to hire or fire.

Trial Examiner Myers: That his duties compared with those of a foreman.

Mr. Williams: That he carried out orders as to the work.

Trial Examiner Myers: Yes, that is right.

Q. (By Mr. Martin) Did the boatswain, Leslie Thompson, say anything other than that?

(Testimony of J. Gordon Rosen.)

A. No, he didn't. He just said he was disgusted and said he felt like quitting himself.

Trial Examiner Myers: Did you ask Mr. Thompson who gave him the authority to fire you?

A. He told me. He said, "The mate said 'you are fired.'"

Q. (By Mr. Martin) Which mate?

A. He just said, "the mate." [150]

Q. Which mate is that?

A. Generally speaking of the mate is a reference to the chief mate.

Q. Then what did you do after that conversation?

A. Went down and started packing up. About one o'clock the second mate, Mr. Morgan, came down and said, "I have been looking all over for you. I want to give you your money."

So I went up. While Mr. Baldwin was making out my discharge I said, "What is the reason for me getting fired?"

He said, "The reason?" "Well, you know we don't want any agitating back there."

I took my discharge and left.

Trial Examiner Myers: What do you mean by "back there"? You have made that statement several times.

A. In sea terms that means back aft.

Trial Examiner Myers: Meaning your quarters?

A. Crew's quarters.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) After your conversation with those two gentlemen, did you understand that you had been discharged?

A. There was nothing else I could infer.

Q. You say you then got your gear and left the boat?

A. I did.

Q. Is there anything to sign in a case like that?

A. Yes, sir, signed a voucher for my pay.

Q. And you did that? [151]

A. Yes, sir.

Q. What was your rate of pay on the SS "California"?

A. Eighty dollars a month.

Trial Examiner Myers: We will take a three minute recess while counsel for the Board confer with Union counsel.

(Thereupon a short recess was taken.)

Trial Examiner Myers: Are you ready gentlemen?

Q. (By Mr. Martin) Mr. Rosen, you have testified that in 1935 you worked on The Texas Company's SS "Nevada" from about October 22nd to about February 2nd of the following year, a period of roughly three months.

A. Yes, sir.

Q. When you left that ship, did you leave of your own desires?

A. Yes, sir. The captain even tried to hold me on there. So did the mate.

Q. How do you mean?

A. Well, the mate told me, "There is no need for you quitting here. You can go to Port Arthur with us." This was in New Orleans.

(Testimony of J. Gordon Rosen.)

I told him, "I want to get off here."

Q. For reasons of your own?

A. For reasons of my own. I went up and saw the captain, Captain Swanson. He said, "It is going to be hard to get a man in your place."

I said, "Well, I want to quit here." [152]

He said, "Well, I don't think I can give you your money unless you come to Port Arthur with us."

I said, "I will take a chance on that."

I left and went and packed up my clothes.

Q. Did he give you your money?

A. Well, after I packed up my clothes and was ready to go ashore the mate called me and told me, "The captain will give you your money."

Q. What was the mate's name?

A. Tranberg; Carl Tranberg.

Q. Then you testified that you reshipped on the SS "Nevada" on or about January 10, 1938, and served until on or about April 19, 1938?

A. Yes, sir.

Q. When you reentered the service of the boat at that time——

A. (Interrupting) Reentered the——

Q. (Continuing) When you got on the boat at that time——

A. (Interrupting) Which one? [153]

Q. The "Nevada". When you first entered it, when you were hired in January of 1938, were you welcomed on board?

(Testimony of J. Gordon Rosen.)

A. I was. The mate Tranberg was very pleased to see me. He said, "Hello. Where have you been?" All kinds of questions like that, and there were several witnesses sitting in his room when we had this conversation welcoming me back to the ship and they overheard it. One of them's name is Salas and the other one's name is Clark, Robert Clark. The mate told me, "You should have come back to The Texas Company before this."

I said, "Well, I was on different ships."

He said, "I expected to see you back here before now." He said, "How have you been doing? How are you doing? Where have you been keeping yourself," and so forth, and I answered.

I asked him if we were going to Spain; if the ship was.

He said, "Yes."

I said, "Are we going to get the \$50.00 bonus?"

He said, "Yes, we are."

Q. Who was that? A. Carl Tranberg.

Q. Did you have conversations with other officials of the boat?

A. I did. I had a conversation with Herman Hopper who was the second mate at that time. Previous to that he had been [154] the third mate and I had been on his watch.

Q. That was in 1935?

A. In 1935 and 1936.

He said, "Hello, where have you been?"

I told him I had been on different ships.

(Testimony of J. Gordon Rosen.)

He said, "Well, we are glad to see you back here." That is all he said.

I talked to the third assistant, Mr. Grunberg, and the second assistant—I don't recollect his name at the time. The first assistant—I don't recollect his name at the time—and they were questioning me about where I had been and everything that went on on the vessel since I had left and what ports they had made. He questioned me about my past history and so forth.

Q. While you were on the "Nevada" in 1935 and 1936 were you given any special assignments that were not given to other able-bodied seamen?

A. Yes, sir, I was. The mate asked me if I could splice lines, manila. I said, "Yes, I can." So he put me on that job at nights. That was my duty at night, to splice all the lines that were broken on each voyage. That was my special duty.

Q. And what are the duties of a normal, ordinary seaman on night shift?

A. You mean A. B.? I was an A. B. on there.

[155]

Q. An A. B.

A. Stand lookout, stand by, clean up the quarters back aft, and any other duties that the mate on watch considers necessary.

Q. But in your case when there was splicing to be done they would have you do it?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Was that true with respect to any other able-bodied seamen aboard?

A. No, sir, I can't remember of any.

Q. Do you remember any other instances aboard the "Nevada" at that time? A. Yes, sir, I do.

Q. (Continuing) When you were assigned special duties?

A. It wasn't exactly a special duty. We got into a bad storm leaving New York; called out about 5:00 o'clock in the morning. Barrels were adrift on the boat deck. We went back there and lashed them up. There was a big anchor weighing about five tons on the fore deck that was breaking loose. The mate told me, "Give me a hand to secure this," which we did; put a wire lashing around both ends of the anchor, put a strap around the base of the ventilators, secured it with turn buckles, tightened up the turn buckles every time the anchor would shift, and secured it in that manner. [156]

Q. Were there any remarks by the mate or any other officer?

A. Yes, sir. The first trip coming back to New Orleans after this blow, we got to New Orleans and two of the quartermasters got drunk. The mate told me, "You go up there and take the quartermaster's turn at the wheel."

I took the quartermaster's turn at the wheel from 8:00 o'clock that evening until 12:00 that night and from 8:00 o'clock the next morning until about 10:00 a. m. Then I went down, helped the mate and

(Testimony of J. Gordon Rosen.)

the other men in the crew put out a gangway, and the mate told me, "If you want a quartermaster's job it is yours."

I said, "No, I don't want that quartermaster's job. It is too monotonous. It is too easy. I get tired of it."

He said, "Well, I would rather have you on deck because you are better and handier on deck than these other men are."

I said, "All right. I will stand on deck as an A. B."

Mr. Pipkin: Is this the first trip with the "Nevada" or the second?

A. The first occasion I was on the "Nevada" for a period of about three months.

Mr. Pipkin: And that is the time you are talking about now?

A. Yes, sir.

Q. (By Mr. Martin) Did the mate make any comment about what kind of job you did in tightening down the anchor? [157]

A. Carl Tranberg?

Q. Yes. A. Yes, he did.

Q. What did he say?

A. He said, "Well, we done a good job on that."

Q. He was referring to your activities as well as to the activities of others?

A. Yes, sir, in securing the anchor.

Q. Did you engage in union activities when you boarded the "Nevada" during the second time in 1938?

A. Yes, sir, I did.

(Testimony of J. Gordon Rosen.)

Q. What did you do?

A. The first thing I did I brought some literature aboard from the union hall, official Pilots, leaflets from the union, and communications.

Q. Yes.

A. When we were out to sea about two days I asked who was the delegates on the ship. They notified me that C. Buckless was the deck delegate, Lee Holmes the engine delegate, and Sidney Cole the steward's department delegate. I went up to those men and asked them when we were going to have our first meeting. They said, "We will call one within the week," which they did. At the meeting we checked up on the number of union books aboard the ship and found out the ship was a hundred per cent union with the exception of one man. He [158] had an I. S. U. book.

Q. International Seamen's Union?

A. International Seamen's Union. I believe it was a reorganization committee that they were working under. Then at this first meeting we questioned the steward about the food on there. They couldn't make arrangements for the different food situations. We were going to go up to the captain and ask the captain if he couldn't arrange for better food and the steward said, "I don't think it will be necessary." The steward's name was Jansen at that time. He said, "I don't think it will be necessary. I will go up and tell the captain myself and I think we can straighten it out that way. It is

(Testimony of J. Gordon Rosen.)

better to be tactful at times to the captain," he said. "He is a pretty hard man to talk to," and we agreed upon that. We had a discussion about the bonus on the ship. It was brought up that if we made more than one port we would ask for a \$50.00 bonus per trip. It was agreed upon. I discussed the union with the third mate, Roger Kelly, on watch, because under this practice when there is rough weather and the man on lookout can't stay on the forecastle head he is permitted to go on the top bridge and Roger Kelly was up there. I was talking to him about union matters and he told me, "I ought to join the N. M. U. myself." He said, "I am getting \$50.00 bonus for each trip I make to Spain. The only one that got it for me was the N. M. U. members." [159]

I told him, "Yes, that is the thing you really should do. It is only right."

And he agreed he would join the union when he got back to Port Arthur.

Q. You mean from time to time you would talk about union matters with the third mate?

A. Yes, sir, from time to time.

Q. Did the "Nevada" go immediately to Spain the first trip?

A. Yes. I asked the mate when I came aboard the ship if we were sailing for Spain. He said he didn't know but that he would tell me. About 4:00 o'clock in the afternoon he said, "We are sailing tomorrow morning at 5:00 o'clock."

(Testimony of J. Gordon Rosen.)

So the next morning at 5:00 o'clock we sailed for Spain.

Q. How many ports in Spain did the ship anchor at? Name them, please.

A. We only anchored at one port, La Corona.

Q. Was that the first port at which the ship stopped in Spain?

A. It was the first port.

Q. Where else did the ship stop in Spain?

A. Bilboa and Pasjes.

Q. You say the boat anchored only at La Corona?

A. Yes, sir.

Q. Was it tied to the dock at Bilboa and at Pasjes?

A. It was [160]

Q. Now when the boat was in Bilboa did you contact the captain with respect to any question?

A. Yes, sir. We had a discussion amongst the crew about shore leave. The captain sent word back aft that there wouldn't be any shore leave. The crew seemed to feel that they were entitled to shore leave after 23 days at sea. They were sitting in the mess room and they said, "We will elect you to go up and see the captain to speak about this shore leave."

I said, "I will take a witness with me."

His name was W. W. Salas. We went up and on the way up we met the second mate, Herman Hopper. We asked him, "Did you hear anything about this shore leave?"

(Testimony of J. Gordon Rosen.)

He said, "No, but you fellows back aft ought to elect a committee to go up to see the captain about getting shore leave."

I said, "We are going to do that right now."

Q. Did you say, "We are the delegates"?

A. We were delegated.

Q. Did you tell him that?

A. Yes, sir. I said, "We are delegated to do that right now."

We had a little conversation with him and he said, "All right. I wish you luck."

We went up. Captain Swanson was sitting in a room drink- [161] ing beer with some Spanish official.

I said, "Captain Swanson, I understand we are not allowed any shore leave."

Captain Swanson said, "No, I can't give you fellows any shore leave. I understand that the port authorities will not permit it."

I said, "Is there any means that we can obtain shore leave?"

He said, "No."

I said, "Will you allow one of the members of the crew to go ashore to see the authorities to get shore leave?"

He said, "No." He said, "However, I will try to get shore leave for you."

I said, "We would like you to do that."

I went back aft and notified the other members of the crew. [162]

(Testimony of J. Gordon Rosen.)

Q. When you first talked with the Captain, did you say "we are speaking for ourselves only"?

A. No, sir.

Q. What did you say?

A. I said, "The crew elected us to ask you whether we could get shore leave."

Q. Did the Captain ask you for your credentials? A. No, sir.

Q. Didn't he question your authority to represent the men?

A. No, sir. In fact there was a letter posted on that ship giving the crew the right to elect representatives to speak for and bargain for them from J. P. Roney, general manager.

Q. And then was word sent back later on this issue? A. Yes.

Q. What word?

A. The Captain sent the quartermaster back aft to tell us that shore leave had been granted and we would be allowed to make a draw. This was about six-thirty at night.

Q. By "draw", you mean what?

A. That is the technical definition I believe of a certain amount of money that you are allowed or have the right to ask for.

Q. Were all the men allowed to go ashore at once?

A. Yes, sir, we were all allowed permission except the men on watch. That is understood. [163]

(Testimony of J. Gordon Rosen.)

Q. Then you have testified that the boat went from Balboa to Pasjes? A. It did.

Q. Did you contact the Captain there?

A. The Captain notified us again that no shore leave would be allowed. Some of the members of the crew were pretty anxious to go ashore there and they said, "Will you go up and talk to him again," which I did.

He said, "No——

Trial Examiner Myers: Did you go alone this time?

A. I went alone that time, yes.

He said, "No permission will be granted you unless we have authorization of the military authorities." He said, "Some of the crew got drunk in Balboa."

I said, "I didn't know about——

He said, "Some of the crew got drunk and created a disturbance in Balboa."

I said, "I had never heard of this before".

"Well," he said, "I will have to get permission before anybody goes ashore."

Q. Did you tell the Captain that you were speaking solely for yourself?

A. He recognized me as speaking for the crew.

Mr. Pipkin: Just for our information, how far is this second port from Balboa? [164]

A. It was about twelve hours' to fifteen hours' run. I haven't the exact statistics.

(Testimony of J. Gordon Rosen.)

Mr. Pipkin: You would reach it within the same day——

A. (Interrupting) The same day.

Mr. Pipkin: (Continuing) That you weighed anchor?

A. To the best of my memory we left Balboa one evening and we arrived in Pasjes the next evening about four o'clock.

Q. (By Mr. Martin) Mr. Rosen, a few moments ago you made some mention of a discussion over a bonus for the trip to Spain?

A. Yes, sir.

Q. Did you have any discussions with any officers of the ship in regard to this bonus?

A. Yes, sir.

Q. Or in regard to this question?

A. Yes, sir.

Q. Will you tell us about that?

A. I asked the mate when I joined the vessel, Mr. Carl Tranberg, I said, "Are we going to get a bonus for this trip?"

He said, "Yes, we are going to get a bonus."

Q. Now, did you tell the mate at that time that you were speaking solely for yourself?

A. I had just joined the vessel at that time. I was speaking solely for myself. [165]

Q. Yes.

A. Then I spoke to Roger Kelly about the bonus and he said that we would get the bonus also, and then is when we had the conversation about he felt

(Testimony of J. Gordon Rosen.)

that he ought to join the N. M. U. because they had got him the fifty dollar bonus. Then I had another conversation about the bonus with Mr. C. L. Hand.

Q. When was this?

A. When we arrived back from Spain on or about February—the last day of February; one of the last two days of February. The crew had a meeting——

Mr. Pipkin: In what year, Mr. Rosen?

A. 1938.

The crew had a meeting and it was voted that I go up with delegate Buckless and Lee Holmes, and ask Captain Hand whether we were not entitled to receive fifty dollars per port.

I saw Captain Hand amidship. I went up with Lee Holmes and Buckless. I said, "Captain Hand, I would like to speak to you a minute."

He was busy speaking to the second assistant engineer.

Q. That is, Mr. Hand had come aboard the ship when it was in port?

A. Just as soon as it docked Captain Hand came aboard the ship. [166]

I said, "Captain Hand, we would like to see you about this bonus question. Do we get \$50.00 per port or for the trip?"

He said we would get fifty dollars a trip.

I said, "Well, union companies and union ships pay \$50.00 per port."

(Testimony of J. Gordon Rosen.)

He said, "Our understanding is that we are only to pay \$50.00 for the trip."

I said, "The Maritime Commission I believe recognizes the bonus as legitimate."

Captain Hand said, "We are not out to cheat anybody. Don't think that for a minute."

I said, "No, I don't think The Texas Company is, but we would like to get this matter straight. If the Maritime Commission sets this precedent I think The Texas Company ought to pay it."

He said, "If the Maritime Commission sets this precedent The Texas Company will pay it."

I said, "If I can get official word or notice from the Maritime Commission, will you pay this?"

He said, "Yes, if the Maritime Commission hands down its ruling."

I said, "Is there a Maritime Commission officer in Port Arthur?"

He said, "No." He said, "By the way, what is your [167] name?" which I told him. Then he pointed to Buckless and he said, "What is your name?"

Buckless told him.

He said, "What is your name?" to Lee Holmes.

Lee Holmes told him.

He said, "What is your rating?"

I said, "I am an A. B."

He said, "What are you?" to Buckless.

Buckless said, "I am the boatswain."

(Testimony of J. Gordon Rosen.)

He said to Lee Holmes, "What is your rating?"

Lee Holmes said, "Pumpman."

He said, "Well, you know you fellows got a raise in pay of five dollars?" "Most of them" I think he said. He said, "You know you fellows got a raise in pay this trip?"

I said then, "If we get a letter from the Maritime Commission you will recognize it?"

And he said, "Yes," and he left.

Trial Examiner Myers: How much did you get?

A. Fifty dollars only.

Q. (By Mr. Martin) When you first spoke to Captain Hand, did you tell him that you were speaking for the three of you only?

A. No, sir.

Q. What did you say? [168]

A. I said, "The crew elected us to come up here to ask about this question."

Q. Were you wearing a hat?

A. I was wearing a white cap.

Q. You were wearing a cap at that time?

A. Yes.

Q. Did you take it off while you were talking to Captain Hand?

A. I don't remember whether I did, or not.

Q. Did you do all the speaking for the three of you?

A. Pretty much. About ninety per cent of it.

Q. The others said a few things?

(Testimony of J. Gordon Rosen.)

A. They verified what I had said. Buckless said, "Yes, we would like to get this straightened out," and so forth.

Q. You didn't leave the boat either from your own desires, or the Company's desires at the end of this trip?

A. At the end of this particular trip from Spain?

Q. Yes.

A. No. There was a Commissioner there signed us off and gave us a foreign discharge and we were put on coastwise articles.

Q. Then you made another trip?

A. Several more.

Trial Examiner Myers: Did you ever get a letter from the Maritime Commission? [169]

A. I didn't personally receive any letter from the Maritime Commission, no, sir.

Trial Examiner Myers: Did you ever apply for it?

A. Yes, sir, we wrote to the Maritime Commission.

Trial Examiner Myers: And you never got an answer?

A. I didn't receive an answer myself, no.

Q. (By Mr. Martin) About what was the date of the end of the foreign trip and the beginning of the coastwise trips?

A. About the second to the last day in February.

(Testimony of J. Gordon Rosen.)

Q. Near the end of February?

A. Right close to the end of February.

Q. Now, you testified, Mr. Rosen, that you left the boat on or about April 19, 1938?

A. Yes, sir.

Q. Did you engage in any Union activities between March 1st and April 19, 1938?

A. Yes.

Q. Describe them.

A. We had a discussion about these back wages. The officers received back wages retroactive from the time the wage scale had been raised, but the crew did not. We were notified first that we would receive it and then notified later that we would not. So the deck delegate, Buckless, went up and asked the Captain why we didn't receive this back pay. According to Buckless, the Captain had some kind [170] of a letter to the effect that we were not supposed to get it. However, at a meeting we held I voted that we send a telegram to J. P. Roney requesting information as to why this was not paid as it was contrary to the general policy of The Texas Company.

Mr. Van Dusen: I move that that portion about what Buckless said be stricken on the ground that it is hearsay.

Trial Examiner Myers: Will you read the question again, Mr. Reporter. I think you are too late with your objection, Mr. Van Dusen.

(The last two questions and answers were read)

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike it all out except the word "yes" on the grounds that it is not responsive.

Q. (By Mr. Martin) Did you have any Union meetings?

A. Regular Union meetings on the Nevada.

Q. Were you active in them?

A. Yes, sir. I was elected chairman, I was elected secretary, I was elected as special spokesman for the crew.

Q. How often would you have meetings?

A. On every trip we would have at least one in each direction on a coastwise trip, and we had a number of them going to Spain and returning from Spain.

Trial Examiner Myers: You only made one trip to Spain, is that right?

A. Only one trip to Spain. [171]

Q. (By Mr. Martin) Were you with delegate Buckless when he had a conversation with the Captain with respect to retroactive wages?

A. No, sir, I was not.

Q. Was there any discussion with respect to overtime? A. Yes, plenty of it.

Q. Tell us about that.

A. One discussion on overtime was at a place called Cat Island. This was on or about the return from the first trip to New Haven.

Q. After the Spanish trip?

A. Yes, sir. On or about March 14th, 1938.

(Testimony of J. Gordon Rosen.)

Q. Did you have a discussion at that time?

A. Yes, sir. The mate approached me and said, "You have a certain number of hours overtime coming."

I said, "What about the Cat Island overtime?"

He said, "I don't know anything about that."

I said, "Well, we have it coming. We are justified in asking for it."

He said, "You will have to see the Captain about that."

He turned to Buckless standing in the same place and he told Buckless and Buckless told him the same thing; that we had the Cat Island overtime coming. The mate slammed his overtime book shut and walked away. Then he came back; we were working back aft; and told Buckless in [172] my presence that "All you fellows that want that Cat Island overtime come up on the bridge." [173]

Q. The mate said that? A. Yes, sir.

Q. Who was speaking? A. Carl Tranberg.

Q. Speaking to whom? A. To Buckless.

Q. Whom did he say to come up on the bridge?

A. All the fellows that want that Cat Island overtime.

Q. And whom did he say gave him those instructions?

A. The Captain, Captain Swanson. Then Buckless turned to us and said, "What are we going to do about it?"

(Testimony of J. Gordon Rosen.)

We said, "We will have a meeting right now," which we had. We had a meeting and decided that the delegates, myself and Lee Arnold, would be delegated to speak for the crew to ask for this overtime and the rest of the crew would be there to back us up.

Q. And you said the crew was 100 per cent unionized, members of the N. M. U.?

A. Yes, sir, they were except for one member.

The crew, with Buckless, myself, and Lee Arnold in the lead, marched up on the boat deck almost in a body. Buckless opened the conversation.

He said, "Captain, we would like to get this overtime question straight."

They had a conversation back and forth between them. The [174] captain seemed to be inclined that we were out at sea at Cat Island and he wasn't going to pay the overtime. He said, "I am not going to pay that overtime."

I said, "Captain, your own working rules which The Texas Company posts calls for overtime at Cat Island."

The captain said, "I am not going to pay this overtime."

Then he brought out the fact that we were supposed to be seven miles at sea at Cat Island and I said, "It doesn't make any difference where we were. The working rules are still in effect."

The captain said, "I am not going to pay it" again. He said, "You fellows are not doing any-

(Testimony of J. Gordon Rosen.)

thing for me and I am not going to do anything for you." He said, "You are demanding this and you are going to go too far."

Buckless said, "We are not demanding anything. We are just asking for what we have coming to us."

The captain didn't make any answer to that and Lee Arnold said, "I see that we are not getting anywhere."

Then I believe it was Lee Arnold said, "If we go to Captain Hand and he says to pay it, will you pay it?"

Captain Swanson said, "If Captain Hand says to pay it, I will pay it."

Then on the way back, going up to Port Neches, the captain stopped us and said, "I have orders to pay this overtime, but the next time you go out to Cat Island you are going to work; [175] paint, sooging; do anything else on Sunday afternoons."

We didn't have any discussion on that, but in the salon the captain refused to pay Buckless his overtime.

Q. When you went up to the captain then you said there were three of you?

A. The whole crew that was off watch was up there and some on watch and Buckless, myself, Lee Arnold, and Lee Holmes were in the lead as elected spokesmen of the crew.

Q. Did you inform the captain of the fact that you were spokesmen? A. Buckless did.

Q. Buckless informed him? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Now you didn't leave the ship at the conclusion of this first trip to New Haven?

A. No, sir.

Q. That is, after the trip to Spain?

A. No, sir.

Q. Were any new men employed to work on the ship at the beginning of the next trip?

A. Yes, sir, there were.

Q. How many? In your department, how many?

A. Please ask that question again, the previous question. You say the return trip from Spain?

Q. The next trip after the New Haven trip?

[176]

A. I don't get that quite clear.

Trial Examiner Myers: Will you read the question, please?

(The testimony was read.)

A. That is what I would like to know. What do you mean? At the conclusion of the trip from Spain or at the conclusion of the trip to New Haven, to Cat Island, to Port Neches?

Q. (By Mr. Martin) Yes, at the conclusion of that last trip.

A. Yes, there were several hired. There was one quartermaster hired, an ordinary seaman, and one A. B.

Q. Any others?

A. Not that I recollect at this time in our department.

Q. Were those men members of any union?

(Testimony of J. Gordon Rosen.)

A. Yes, sir, they were members. The quartermaster was a member of the National Maritime Union. Let's see? I am trying to recollect the A. B.'s name that was replaced at this particular time. I can't recollect that A. B.'s name, so I couldn't swear that he was a member of the union or not.

Trial Examiner Myers: What about the other fellow?

A. And the ordinary seaman was not a member of the union.

Q. (By Mr. Martin) Did you talk to him about the union?

A. I did. His name was P. K. Guy. He joined the union on the trip to Marcus Hook and Claymont, Delaware.

Q. Did you have some shore leave between the two trips we are talking about? [177]

A. Yes, sir.

Q. After the New Haven trip and before the Marcus Hook trip?

A. Yes, sir.

Q. Did you engage in any union activities on shore?

A. Yes, sir, I went up to the union hall and discussed the question of the bonus with the union agent. He seemed to be inclined that in as much as the other companies were paying \$50.00 per port we were entitled to it. [177-A]

Mr. Van Dusen: I move to strike what took place on shore and what the inclination of the union men was.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike out all the answer there except the part that he discussed with the union official, the bonus. What he discussed is irresponsible to the question.

Mr. Davis: I think if for no other purpose it serves to corroborate the testimony of Mr. Ames given yesterday. He was asked the question, I believe by Mr. Van Dusen, as to how he knew that particular men were active on the ship and he said by reason of the fact that those men came in to him and made reports, and I think this testimony should stand.

Trial Examiner Myers: Well, it is not responsive to the question. That is the only reason why I struck it out. The question was Was he engaging in any union activities. Instead of saying "yes," he goes along with a long, lengthy, detailed statement.

Mr. Davis: All right.

Q. (By Mr. Davis) What union activity were you engaging in on shore?

A. I went up to the Union Hall and contacted the union agent along with Buckless and Lee Holmes and we asked the agent at the Union Hall about this bonus question. The agent, Arthur Thomas, said, "You fellows are entitled to the \$50.00 per port bonus. However, it is going to be a question of you men sacri- [178] ficing your jobs in order to collect it."

(Testimony of J. Gordon Rosen.)

Mr. Williams: Now, we object to that. There was no officer of the company present when that statement was made.

Trial Examiner Myers: I didn't hear your objection, Mr. Williams.

Mr. Williams: The objection is that no officer of the company or of the ship was present when Arthur Thomas made that statement.

Trial Examiner Myers: I will sustain that objection.

Mr. Davis: Well, I don't think that testimony can bind the company. Certainly, if a union official said, "It is going to mean your job," that doesn't necessarily mean it is going to mean their jobs and we don't offer it for the purpose of binding the company at this point. It is simply offered to show the union activity of this man while ashore and to corroborate the testimony of Mr. Ames given yesterday that these men were active in union affairs.

Mr. Van Dusen: Well, I would like to move to strike it out on still another ground, that it is irrelevant and immaterial.

Trial Examiner Myers: I have ruled on the objection and I stand by the ruling.

Mr. Davis: I thought you ruled it out on the grounds that it was not responsive.

Trial Examiner Myers: Well, he is bringing in a lot of [179] irrelevant things. There is no use going into that. I have let him go so far as to say he had union activities, that he went to the Union

(Testimony of J. Gordon Rosen.)

Hall, that he presented his grievance to the union officials, but what the union officials said to him has no bearing whatsoever on the issues involved.

Mr. Davis: All right.

Q. (By Mr. Martin) Mr. Rosen, was Mr. Ames present? A. I believe he was.

Q. Did you have any discussion with him?

A. Yes, he asked me——

Q. (Interrupting) Did you do any writing with respect to the union?

A. Yes, I did. I wrote a letter to Captain Roney.

Q. At this time? A. On this ship.

Q. While you were ashore?

A. On the ship.

Q. Not while you were ashore?

A. No, sir.

Q. Did you draft any circular letters?

A. Not at this particular time except one letter we had from the ship to be distributed through the Union Hall as coming from the SS "Nevada".

Q. Who wrote that letter?

A. I did; most of it. [180]

Q. When?

A. On the SS "Nevada". It was read to the crew and they concurred in it.

Q. Without going into the contents, just tell us what the letter was about?

A. The letter was about the fact that the N. M. U. had been certified as the collective bargaining

(Testimony of J. Gordon Rosen.)

agency for The Texas Company and inasmuch as we felt that due to the figures given by the N. L. R. B. we had the largest majority of any union represented and we had the right to request the company and the other ships to see that eighty-five per cent of former employees who were N. M. U. men were rehired and that the company will have to pay to the Standard Tankers Agreement and also that passes should be issued to agents and delegates.

Mr. Williams: For what purpose is this testimony going in? Right here I understand that the N. M. U. has been certified as the bargaining agency for the employees of The Texas Company, but I don't understand that there is any contract.

Mr. Martin: The purpose of this testimony is to show that when the crew of the SS "Nevada" was about 100 per cent organized they did, under the name of the SS "Nevada", send a letter to all men, members of the union working on Texas Company ships. This letter as I understand from Mr. Rosen was distributed through the Union Halls and doubtless found [181] its way into many, if not all, of The Texas Company ships. I suggest that that fact alone is enough to justify admitting the letter, even though perhaps it can't be proved that a copy of this letter was seen on the captain's desk or on the mate's desk. I suggest that a letter signed by the crew at the bottom was circulated and that is enough to justify this testimony, because it was in the "Nevada", which we are talking about, as well as in

(Testimony of J. Gordon Rosen.)

other ships that there were discharges for union activities.

Mr. Williams: Mr. Examiner, it being admitted that there is no contract between the N. M. U. and the ships of The Texas Company, unless it be proven that this request reached the officers of the company, then it has no place in this record. [182]

Mr. Martin: Mr. Examiner, we are not interested in the merits of what the letter says. The letter could be almost a blank and so long as it was making efforts on behalf of the Union, still I would think it would be admissable and relevant.

Trial Examiner Myers: I will overrule your objections.

Mr. Williams: Not our exceptions.

Q. (By Mr. Martin) Is this the letter?

A. That is the letter.

Mr. Martin: I ask the reporter to give this letter an exhibit number.

Trial Examiner Myers: It will be No. 8.

(Thereupon the instrument above referred to was marked as Board's Exhibit No. 8 for identification.)

Mr. Pipkin: I want to add that respondent further objects because it is not material to anything charged in this complaint. The complaint is for discrimination.

Trial Examiner Myers: Well, what are your objections now? To the testimony?

(Testimony of J. Gordon Rosen.)

Mr. Pipkin: To the introduction of that letter.

Trial Examiner Myers: He has not offered it so far. It has been marked for identification.

Mr. Pipkin: Well, that objection will be raised when it is offered. I will renew it.

Trial Examiner Myers: All right.

Mr. Williams: Now, we object to this—— [183]

Trial Examiner Myers: Well, it has not been offered yet, Judge.

Mr. Martin: Mr. Examiner, I offer what has been marked for identification as Exhibit No. 8, this being the letter that Mr. Rosen has referred to in his testimony and it being entitled "An open letter to all Texas Company ships from the crew of the SS 'Nevada'," the opening phrase being——

Trial Examiner Myers: Don't read the contents.

Mr. Martin: All right. The letter being signed "Fraternially yours, crew, SS 'Nevada'," and I offer that to prove that the crew of the SS "Nevada" and the union leaders in that crew were active in union activities and that, it being a circular letter, the knowledge of the militancy of this group of men might more easily find its way to the company.

Trial Examiner Myers: Any objection to the letter going in evidence, gentlemen?

Mr. Williams: We object to it on the ground that it is simply an inter-communication between members of the unions themselves. It is not addressed to the company. It is not addressed to the

(Testimony of J. Gordon Rosen.)

master of any ship. There is no evidence that it was ever received by the officers of the company, ever received by the master of any ship. It shows on its face that it is militant propaganda for the sole purpose of promoting enthusiasm among the members of the union and it is not pertinent to any inquiry in this case. If that letter is admissible we will have to admit every communication between [184] branches in this Union, by men in the Union to each other, and from men in the Union to the branches, home office, and so forth. We would pile a record up here that would be as big as this court house.

Mr. Martin: I feel, Mr. Examiner, that the fact that it is signed by the crew of the SS "Nevada" is enough to justify it going in evidence in this hearing, a number of the men discharged having worked on the SS "Nevada".

Trial Examiner Myers: I will overrule the objection and ask the reporter to please mark Board's Exhibit No. 8 for identification in evidence as Board's Exhibit No. 8 and to note an exception to the ruling for the respondent.

(The document heretofore marked Board's Exhibit No. 8 for identification, was received in evidence.)

(Testimony of J. Gordon Rosen.)

BOARD'S EXHIBIT NO. 8

AN OPEN LETTER TO ALL TEXAS CO.
SHIPS FROM THE CREW OF THE S. S.
NEVADA

Dear Brothers:--

We believe that the time has come to allow no new men to ship on Texas Co. ships without N. M. U. Books!

On the face of this, it might seem that we are dictating a militant policy of action, but the fact remains that 90% of all bona fide Seamen belong to the N. M. U. and every effort should be made to make the Texas Co. 100% N. M. U. if only for the following reasons.

There are experienced seamen on the beach today who have worked for the Texas Co. in the past; yet the backwoods are being combed for green men to go aboard ship! The next time you hit the beach, one of these green men will be all set to take your job.

Green men are willing to accept any standard and any wage for the sake of a job. The Texas Co. is today falling far below the standards set by N. M. U. men on fully organized ships. **EVERY UNORGANIZED MAN ON YOUR SHIP IS ENDANGERING YOUR CHANCE TO MAINTAIN A FAIR SCALE OF WAGES AND WORKING CONDITIONS IN THE TEXAS COMPANY . . .**

It is the unwritten code of the sea to teach the

(Testimony of J. Gordon Rosen.)

beginner the right way to do the job. Breaking in new men throws a double load on your shoulders. You not only have your own job to take care of, but spend additional time and energy showing him how to do his job right.

Unorganized men do not realize the value of co-operation with union men on the ship thereby doubling the danger of accidents. New men have to be watched closely both for their safety and for yours!

It has been proven in the past on this ship and all other ships that unorganized men are anti-social at all times.

Unorganized men are the reason for the existence of crimp joint Scratch Houses, and back door shipping, jobs bought and sold, Private shipping lists, Black Ball, lists, and other types of favoritism. The above type of shipping are a disgrace to American Seamen and the American Merchant Marine. We maintain that the only fair and impartial method of shipping is the rotary system as practiced by the N. M. U.

The LaFollette Senate investigation Committee brought out the fact that the Major Oil Companies have Pinkerton men and other types of anti-labor men aboard ships. You might have one of these jolly lads aboard your ship. The above types of shipping are a good method to place spies aboard your ship.

(Testimony of J. Gordon Rosen.)

After several months of effort in breaking in a new man, if he is still unorganized, it is more that reasonable to expect that he will become a potential strikebreaker, should the occasion arise.

We therefore request that you bring this matter up at your next union meeting and give it your earnest attention for upon your action or lack of action on this matter at this time will determine whether Texas Company ships are to keep abreast of other organized ships in maintaining union wages and working conditions.

Fraternally Yours

CREW S. S. NEVADA

P. S. If your crew endorses this letter please notify the NMU hall in Port Arthur.

Q. (By Mr. Martin) Mr. Rosen, do I understand that this letter was distributed?

A. Yes, when I came aboard the "Washington" it was hanging in the forecastle of that ship.

Q. You saw it there?

A. Yes, sir, and others saw it there.

Q. The forecastle mess room?

A. Yes, sir.

Q. Who eats in the forecastle mess room?

A. The whole crew.

Q. Including?

(Testimony of J. Gordon Rosen.)

A. The engineers come up there for night lunch at night. [185]

Q. And does one drink coffee there?

A. Yes.

Q. Who does?

A. Anybody that wants to. The captain can drink there if he wants to.

Trial Examiner Myers: Did you ever see the captain drink coffee in there?

A. No, sir, but he makes his rounds and he looks in there all the time.

Q. (By Mr. Martin) You have seen the captain in there? A. Yes, sir, I have.

Q. Did you see that captain in there while that message was hanging on the bulletin board?

A. Yes, sir, I did.

Q. Is that captain blind?

A. He has very good eye sight.

Q. Did he understand that this letter was distributed to men that worked on other ships of The Texas Company other than the SS "Washington"?

A. Yes, sir, we had several responses. The other men came up to the hall and asked us what we wanted to do about that letter from the "Nevada" and also in the Pilot, our official organ, was printed minutes from Texas Company's ships referring to the open letter from the SS "Nevada".

Q. On the SS "Washington", did you see any other members of the licensed personnel in that

(Testimony of J. Gordon Rosen.)

mess room while that letter [186] was hanging on the bulletin board?

A. Yes, sir, I saw the chief engineer, the second assistant engineer, the chief mate, and the radio operator.

Q. Are any of them blind?

A. They have very good eye sight.

Mr. Williams: I suggest, Mr. Examiner, we ought to know whether they can also read and write.

Trial Examiner Myers: Well, the question is whether the witness saw these people read the letter. He has not said that he saw any of the people read the letter.

Mr. Williams: No, he has not said that.

A. Yes, I actually saw one person in particular read that, which was the first mate on the SS "Washington". His name is Ruse. I also saw the chief engineer read it. He questioned us about it later.

Trial Examiner Myers: What is the chief engineer's name?

A. His name is Nathaniel Dilbert.

Q. (By Mr. Martin) Did he question you about it?

A. He asked Buckless in my presence. [187]

Q. Now on or about April 18, 1938, do you remember a discussion with boatswain Buckless?

A. A discussion with the boatswain?

Q. Yes.

(Testimony of J. Gordon Rosen.)

A. Yes. He was fired that day.

Q. He told you so?

A. I heard the captain tell him he was fired.

Q. You heard the captain tell him he was fired?

A. Yes. We were all lined up to get our money. The captain had a discussion with Buckless. He said, "You are fired."

Buckless wanted to know why. He said something about some beer. I don't know what the exact words were.

Q. Try and remember what the words were.

A. He said, "I told you not to bring that beer aboard."

Buckless said, "I didn't bring any beer aboard."

The captain said, "You did and you are fired."

Then I went looking for some of the other members of the crew to see what they were going to do about Buckless. We met him as he came down the ladder from the salon mess room.

Trial Examiner Myers: Whom do you mean? Buckless or the captain?

A. Buckless. Lee Arnold and myself asked Buckless, "Are you fired?"

He said, "Yes."

We asked the other members of the crew what they thought [188] about it and they said, "Well, you will have to see the mate."

So we went over and talked to the mate, Carl Tranberg.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Who went?

A. Arnold and myself as spokesmen of the crew.

Trial Examiner Myers: Did you ask Buckless if he ever brought any beer on board?

A. I never knew he brought any beer on board.

Trial Examiner Myers: Well, did you ask him?

A. No.

Trial Examiner Myers: Go ahead. You went to the third mate and what happened?

A. To the chief mate, Carl Tranberg.

Trial Examiner Myers: All right. To the chief mate.

A. Lee Arnold said, "I understand Buckless got fired."

Carl Tranberg was very much surprised. He said, "Who fired him?"

Lee Arnold said, "The captain did."

I said, "What is the reason for firing Buckless?"

Tranberg said, "I didn't know he was fired."

Buckless was standing there. He said, "I am fired."

So the mate was very much surprised about it; wouldn't give us any satisfaction and we walked away and we had a discussion of what we should do about it. Some of the members wanted to try to have a group go up and see Captain Hand. I said, "No. Under the circumstances I feel we should file [189] charges with the Labor Board."

This was agreed upon. I went up that night, secured members of the crew on that ship, we made

(Testimony of J. Gordon Rosen.)

out affidavits of Mr. Buckless' good record on that ship, his union activities, and so forth.

Q. (By Mr. Martin) Were you instructed to report back to work or that you too were dismissed?

A. No, sir. I was instructed to go to work and at 2:00 o'clock in the afternoon the mate told me I could have the rest of the day off and to come back in the morning at 8:00 o'clock; they might need me; he thought they were going to shift the ship.

Q. And did you report back the next morning?

A. I did, promptly at 8:00 o'clock.

Q. Did any new employees come aboard at the beginning of the next trip?

A. Yes, the same day Buckless was fired they called up for some new employees. They arrived there that evening or early the next morning.

Q. Did you speak with any of them?

A. I spoke with two of them.

Q. Do you remember their names?

A. One of them was Leo Herman, an A. B. The other one was a young boy. I couldn't find out his name; an ordinary seaman. [190]

Q. Will you tell us about that conversation with Herman?

A. Yes. I talked to Herman before breakfast. I asked him if he had a union book.

He said, "Yes." He said, "I have an I. S. U. book."

(Testimony of J. Gordon Rosen.)

I said, "Do you know that The Texas Company has been certified by the N. L. R. B. as being an N. M. U. company?"

He said, "Well, I have an I. S. U. book. What about it?"

I said, "Well, I just wanted to give it to you before you started so you will know the circumstances."

"Well," he said, "you can do anything you want to about it. As soon as you get off this ship there will be a whole bunch of fellows on the beach to take your place."

Then he went and rushed up the deck and talked to the chief mate, Carl Tranberg.

Q. Did you see him talking with the mate?

A. I did.

Q. Did you hear the conversation?

A. No, sir.

Trial Examiner Myers: Was this man hired?

A. He was.

Trial Examiner Myers: Was the young boy hired?

A. Yes, sir. I talked to the young boy too.

Trial Examiner Myers: Did they have two men to take Buckless' place? [191]

A. No. Buckless was the boatswain. They moved up a quartermaster to the boatswain's job and an A. B. took the quartermaster's place and they hired an A. B.; and one ordinary seaman also quit, I believe. I don't remember the circumstances.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Do you remember his name?

A. Pleasant, I believe. Linville Pleasant. It is either Linville Pleasant or Pleasant Linville.

Q. Did you see anybody standing with the mate and Herman when they had that conversation?

A. I saw the pumpman, Jack Gallant and a quartermaster, George Hart.

Q. Was Hart within hearing distance of that conversation?

A. He was right next to the mate at the time.

Q. Can you tell us where they were standing?

A. They were standing adimships on the main deck close to the flying bridge.

Q. Would the quartermaster Hart's duties place him in that spot at that time?

A. Yes, sir, his duties were to assist the senior officer in charge.

Q. And he would normally be standing there?

A. He would.

Q. And was? A. And was. [192]

Q. Did you have any conversation with mate Tranberg later that afternoon?

A. Yes, I did.

Q. Tell us what happened. What was said?

A. At 1:00 o'clock I proceeded to turn to, which is a term for going to work. The mate stopped me. After the rest of the fellows had gone past him he stopped me. He said, "Are you going to work until noon or until 5:00 o'clock?"

(Testimony of J. Gordon Rosen.)

I said, "What do you mean? I have the rest of the day off?"

He said, "No. You are finished. You are through."

I said, "Do you mean I am fired?"

He said, "Yes."

I said, "What is the reason for this?"

He said, "Well, it might be the reason that your work is not satisfactory."

I said, "It has taken you a long time to find this out."

Q. You said that?

A. I did. He laughed and walked away up the fore deck and that is the only conversation I had at that time with him.

Q. Where were you standing when you had that conversation? A. On the after main deck.

Q. Did you talk with other members of the crew about this?

A. I did. I came back in the fore-castle about a half hour after and there were F. W. White, Robert Clark, Percy Guy, and [193] some others in there. They said, "We understand you are fired."

I said, "Yes, I am fired."

They were pretty mad about it. They said, "We know what you are getting fired for. What do you want us to do about it? Sit down?"

I said, "No. Come up to make out affidavits and we will file a charge with the Labor Board."

Q. You were aware of your rights under the Wagner Act? A. At that time I was, yes.

(Testimony of J. Gordon Rosen.)

Just as we were speaking about it, the mate came back. He said, "All right, you fellows. Are you going to go to work or not?" and they turned to and went to work. I packed up and received my money from the captain and discharge.

Q. To your knowledge were any others discharged that day?

A. Not to my knowledge. Not that particular day. The day previous Buckless had been fired.

Q. To your knowledge were any others fired on either of those two days than you and Buckless?

A. I believe an ordinary seaman had been fired at the same time Buckless was.

Q. Do you remember his name?

A. Pleasant Linville.

Q. Of your own personal knowledge do you remember any facts about his case? [194]

A. Very slightly.

Q. On the "Nevada" when you collected your money from the captain did you have any conversation with the captain?

A. No, I didn't because C. L. Hand was in there and I didn't wish to engage the captain in conversation in his presence.

Q. Now you testified that you were discharged from the SS "California" on or about September 19 or 20, 1937?

A. September 18.

Q. I am sorry. September 18, 1937?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. To your knowledge were any others discharged from the "California" about that time?

A. Yes, sir. James Blasingame and Arthur Spencer.

Q. Any others?

A. That is all that I know of, and myself of course.

Q. Do you know that there were no others?

A. I don't know if there were any others.

Mr. Martin: Mr. Examiner, that terminates the employment of Mr. Rosen on one more ship and we will take up another ship after lunch.

Trial Examiner Myers: You mean you want to recess now?

Mr. Martin: We would like a recess.

Trial Examiner Myers: Is that agreeable with you?

Mr. Van Dusen: Well, I would just as soon go on and let him complete before the recess. How long will it take? You [195] see, I will want a little time to go over my notes and if you can complete your examination in a few minutes I would rather go ahead.

Trial Examiner Myers: How long will it take? A half hour or so?

Mr. Martin: Yes, it will take probably half an hour or an hour with this witness.

Trial Examiner Myers: All right then. We will recess now until a quarter to two.

(Thereupon, a recess was taken until 1:45 o'clock p. m.) [196]

(Testimony of J. Gordon Rosen.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 o'clock p.m.)

Trial Examiner Myers: Are you ready to proceed?

Mr. Martin: We are ready, Mr. Examiner.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Direct Examination

(Continued)

Q. (By Mr. Martin) Mr. Rosen, while you were employed on the SS "Nevada" in 1938 were you ever assigned to duties that other able bodied seamen were not assigned to?

A. Yes, sir, I was.

Q. Will you please relate those?

A. In Bilboa, Spain, they called us out at night. The ship was making away from the docks. The mate told me to go up forward and see that those Spaniards up there steered the ship right. And the next day he came back at eight o'clock and singled me out and told me: "I want you to see that the deck is straightened up. Take these men with you and get the deck straightened up." In other words, I took the boatswain's place.

Q. Where was the boatswain?

A. He was on dock, and couldn't get aboard the ship.

(Testimony of J. Gordon Rosen.)

Q. Why not?

A. The ship was surging back and forth so badly that they [197] had taken the gangway in, and he attempted to come aboard, and the mate said: "I don't want to see you get hurt. Stay on dock."

Q. So in this specific instance you performed the boatswain's duties? A. I did.

Q. What was your rate of pay on the "Nevada" in 1938?

A. Well, the first trip in 1938 it was eighty dollars a month, plus overtime. The second trip I received a rate of pay of eighty-five dollars a month, plus overtime, from the date we signed up foreign articles; a raise of five dollars in general wages and five cents in overtime; from seventy cents an hour to seventy-five cents an hour.

Q. And was that the rate of pay until you were discharged? A. It was.

Q. Did all the able bodied seamen get the same rate, same pay? A. They did.

Q. To clear the record, Mr. Rosen, will you please state how long it has been since you have had any hair on your head?

A. Six years ago my hair fell out and I was completely bald since then until about a month or two ago, when it started coming back in spots.

Q. And then you shaved it off?

A. Yes, sir. [198]

(Testimony of J. Gordon Rosen.)

Q. So during all the time you have worked on Texas Company ships your head has been completely bald? A. It has.

Q. Now, Mr. Rosen, you testified that you worked on Texas Company Ship, SS "Washington" from about June 1, 1938, until about July 14, 1938? A. Yes, sir.

Q. When you shipped on this boat, what conditions on the boat did you observe?

A. I went aboard ship. The crew came back. I asked why there were no screens in the forecastle, no proper wind chutes. The screens on the door were broken, the ventilators were not screened, and there were not sufficient buckets, and the white linen was not changed every week. One member of the crew, Alfred Wukasch, told me that since they had stopped having union meetings on this "Washington" they had not been getting very much. I asked them what was the reason they stopped having meetings; and they said, well, whenever they had meetings and elected delegates, the delegates got fired.

Mr. Williams: I move to strike that. No officer of the company was present. I don't see how that is binding on us; hearsay statements of other members of the crew. Furthermore, it is not responsive to the question.

Trial Examiner Myers: Read the question.

(The question was read by the reporter.)

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike out that part of the [199] testimony where he refers to the conversation with the fellow workmen. Otherwise, denied.

Q. (By Mr. Martin) In your conversation with the crew, were you informed that no union meetings were allowed on the boat?

A. I was informed that when they held union meetings and elected delegates, the delegates got—

Trial Examiner Myers: The question calls for a “yes” or “no” answer.

A. Not definitely, I was not informed, no, sir.

Q. (By Mr. Martin) Can you explain that please?

A. Yes, sir. I asked why the meeting had not been held on the ship. Alfred Wukasch told me that when they held a meeting and elected delegates, the delegates got fired; and, therefore, they didn't think there was much reason to have meetings.

Mr. Williams: I move to strike that testimony for the same reason.

Trial Examiner Myers: Denied.

Mr. Williams: Execption.

Q. (By Mr. Martin) Mr. Rosen, while you were working on the SS “Nevada” during 1938, was any of your work criticized adversely?

A. Never.

Q. Now, on or about Wednesday evening, June 8, 1938, did you participate in a discussion with the chief engineer? A. I did. [200]

(Testimony of J. Gordon Rosen.)

Q. Will you tell us about that discussion?

A. I made some notes on that conversation.

Q. Have you them with you?

A. Right here.

Q. When were those notes made?

A. Immediately after the conversation took place. I took notes on this conversation, and any conversation I had with any officials of the company, and any conversations I heard any of the delegates or any of the members of the crew have with officials, such as engineers and so forth on the ship.

Q. When did you make these notes?

A. Within an hour after the conversations took place, at least.

Q. What were these conversations about?

A. Union activities.

Q. Where were you when you wrote down these notes? A. In the forecastle.

Q. Did other people see you make these notes?

A. Yes, sir.

Q. Name some of them.

A. Alfred Wukasch, L. Simmons, E. Monesell, F. W. Zinkiewicz, C. Buckless, Archie West, and a seaman by the name of Burns, and another ordinary seaman who relieved Burns for one trip. I don't remember his name.

Mr. Martin: Mr. Examiner, I ask that the witness be allowed to consult these notes in his testimony with respect to conver- [201] sations noted therein.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I would like to ask whether the witness has an independent recollection of those happenings, or if he needs notes to refresh his recollection?

Trial Examiner Myers: Do you need the notes to refresh your recollection?

A. I believe I do. Some of these conversations were rather complicated and exact.

Trial Examiner Myers: Then he may. You haven't any objection then?

Mr. Van Dusen: Well, if he uses his notes to refresh his recollection.

Trial Examiner Myers: I beg your pardon.

Mr. Van Dusen: Not if he is using his notes to refresh his recollection.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) Now with the help of your notes, Mr. Rosen, will you please tell us word for word, in so far as you are able, the discussion of Wednesday evening, June 8th.

A. Yes. On Wednesday evening, June 8th, around six p.m. several of us were standing on the poop deck talking to the chief engineer, Nathaniel Dilbert.

Q. Who was standing there?

A. C. Buckless, myself, F. W. Zinkiewicz,—

Q. And the chief engineer? [202]

A. And the chief engineer and several others. And we had the following conversation. I believe Buckless has been on the ship previously. Buckless

(Testimony of J. Gordon Rosen.)

informed Dilbert that he had been on the "Nevada", and just got fired off the "Nevada".

Mr. Williams: Mr. Examiner, we want an exception to all these conversations unless it is shown that a master of the vessel, the master or one of the mates, or some officer of the company itself was present, because without their presence the conversation is merely self serving and hearsay.

Trial Examiner Myers: He is testifying about a conversation now, as I understand, between the first mate and Buckless.

A. No, sir, the chief engineer and Buckless.

Mr. Williams: We would like to make these matters plain, Mr. Examiner. There is no way for the respondent to meet that testimony. There couldn't be. These are purely conversations among the members of the crew.

Trial Examiner Myers: What about the chief engineer?

Mr. Williams: He is not an officer of the vessel in that respect. The master is the only true officer on any ship. The mates are simply his assistants. That is the marine law, and always has been. When the master leaves, then his first mate automatically becomes master. The engineer is simply a man that has charge of the power plant of the vessel, and not of the personnel. [203]

Trial Examiner Myers: I will overrule the objection.

Mr. Williams: Note our exception.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will give you an exception.

A. The following conversation took place.

Dilbert: "Were you one of those fellows that was in that scandal on the 'Nevada'?"

Buckless: "Yes, I was."

Dilbert: "Well, tell us about it. I heard about it from several different fellows, but I ain't got the straight of it yet. Don't be backward. Tell us about it."

Buckless then explained: "We had been fired for union activities and had filed a complaint with the N.L.R.B. The investigator said we had good ground for a case."

Dilbert: "Well, what do you expect to get out of it?"

Buckless: "Back wages and some assistance and reinstatement on the 'Nevada'."

Dilbert: "Well, I ain't in no position to talk, but you know if you go back on that ship they can make it very miserable for you."

Buckless: "If they do that, I can take it further. Get statements from the crew and take it to the main office."

Dilbert: "If I was on a ship where I wasn't wanted, I would get off."

Buckless: "Wouldn't put your tail between your legs like a dog and run, would you?" [204]

Dilbert: "No, but I don't care if a man is a Wobbly on my ship or not. All I want of him is

(Testimony of J. Gordon Rosen.)

eight hours work, and when he is done with that he should crawl into his bunk and shut up. When I get a man who won't do that, I know how to handle him."

Buckless: "But that ain't right. The company puts up working rules, and when we go to make a complaint that they are not being followed then we get fired."

Dilbert: "They didn't give that reason for firing you, did they?"

Buckless: "Yes, I was a delegate on the 'Nevada' when I got fired. The next day they elected Gordon Rosen, delegate, and he got fired."

Dilbert: "Well, that was mighty stupid of them. They would never catch me like that. You can bet on that."

Rosen: "You know the M.E.B.A. is going to conduct an election in The Texas Company."

Dilbert: "Don't you worry about that. We will take care of all that."

Rosen: "That would be a good thing if the engineers in this company were organized. It would mean more engineers, straight eight hours a day, and a dollar an hour overtime."

Dilbert: "Yes, I used to belong to the M.E.B.A. twenty years ago, and what did I get out of it? I got sold out."

Rosen: "This is 1938. A new and more democratic union." [205]

Dilbert: "The heads of your union will sell you out too in a little while."

(Testimony of J. Gordon Rosen.)

Rosen: "That is pretty hard to do in our organization. I tell you, you ought to come to the meetings we hold."

Dilbert: "No." [206]

Mr. Williams: Mr. Examiner, we again move that all that be stricken because it is absolutely irrelevant to any matter in the charge or in the complaint. It is simply gossip of a crew as to what happened on this ship, and what happened on that, and for further reasons stated before.

Trial Examiner Myers: Denied.

Q. Now, did you have a union meeting on June 9?

A. We did. On Thursday, June 9, 6:30 p. m., a meeting was called in the crews messroom. Phil Zinkiewicz was elected——

Trial Examiner Myers: Wait a minute. The questions was whether you had a meeting?

A. Yes.

Q. (By Mr. Martin) Will you please tell us what transpired at that meeting?

A. Phil Zinkiewicz was elected deck delegate and D. G. Rosen was elected ship delegate. We were instructed by the N. M. U. members of the crew to request better living and working conditions. Immediately after the meeting Zinkiewicz and myself went up to the captain and had the following conversation with him. We were instructed by the N. M. U. members of the crew to request screens in the forecabin, and that someone clean out the bathroom, and other things.

(Testimony of J. Gordon Rosen.)

Q. What did you do at the conclusion of that meeting?

Mr. Van Dusen: In answering this question Mr. Rosen has not stated that any officer on board the ship was present. I [207] move to strike it out for the reasons before stated.

Trial Examiner Myers: This is a meeting of a union. Naturally there would not be any officer of the company there. I will deny the motion.

A. Immediately after the meeting Zinkiewycz and Rosen went up to see the captain, and had the following conversation with him.

Q. (By Mr. Martin) Who was the Captain?

A. Bergman.

Q. Will you tell us please what was said in that conversation?

A. We had the following conversation. Rosen: "Captain, the union men on this ship have just held a meeting, and Zinkiewycz was elected deck delegate and I was elected ship delegate. We would like some information on several things." Captain Bergman: "Well, I don't know anything about any delegates. We don't recognize any union on this ship. If you have anything to say as an individual or collectively you can tell me." Zinkiewycz then talked with the captain and the mate, after which I had further conversation with them. Rosen: "There is something else we would like to find out. Here is the overtime reckoned on this ship?" Captain: "We pay only for the time you are actually

(Testimony of J. Gordon Rosen.)

at work, no more." Johanson: "Yes, only for the time you work." Rosen: "Well, Buckless and I had a talk with Captain Hand while we were on the [208] "Nevada", and he told us the company would give anything any other company would give. Now, here in the Tanker Agreement, which is the minimum all companies are paying, the least you get is one full hour when ever we are called to work overtime." Captain Bergman: "Till such time as the working rules now in effect are changed I can only abide by what rules are now posted." Rosen: "Then, I guess we will have to see Captain Hand about it." Captain Bergman: "You can do that." Zinkiewicz asked about the repair of screens, and changing linens oftener, and cleaning the washroom and getting it in a more sanitary condition. The captain agreed on the changes, and then called the mate, Mr. Johanson, down from the bridge, and asked him about keeping the washroom clean. The mate agreed to have someone clean up the washroom.

Q. Now, Mr. Rosen, when did the boat rearrive at Port Arthur? A. On June 22.

Q. Tell us what happened on that day?

A. We arrived at Port Arthur at 1:30. I was working over the side, and Zinkiewicz informed me that he was fired. I asked him why, and he said that the mate told him he was too slow. I then told him to call Captain Hand and make an appointment, and I would talk to Captain Hand after I

(Testimony of J. Gordon Rosen.)

was through working; and he said he would. [209]

Mr. Williams: I move to strike the testimony that Mr. Zinkiewycz told him he was fired, not being in the presence of an officer of the ship.

Trial Examiner Myers: Read the question?

(The question was read by the reporter.)

Trial Examiner Myers: Motion denied.

Mr. Williams: Exception.

Q. (By Mr. Martin) Continue, Mr. Rosen.

A. I was washing up at 4:30, and another sailor came and told me that Zinkiewycz and Captain Hand were aboard the ship. I hurriedly dressed and went out to meet them. Zinkiewycz was standing by the gangway. I asked him what had happened. He said he had talked to Captain Hand, who was now talking to the mate, Mr. Johanson. About this time Captain Hand and Two Gun Myers came out of the mate's room, and I had the following conversation with Captain Hand. Hand: "What's the matter you haven't any socks on?" Rosen: "No, I was in too big a hurry to try to get a chance to talk to you." Hand: "Well, what is it?" Rosen: "It is those old working rules you have posted, of October, 1937. We do not feel that they are up-to-date with other company working rules." Hand: "Oh, that's nothing. What is the exact thing in dispute?" Buckless: "It's this half hour business." Rosen: "Yes. All other companies are paying nothing less than the first hour. This company claims they will live up to what other companies [210] are doing,

(Testimony of J. Gordon Rosen.)

yet we cannot get a reasonable adjustment." Hand: "Well, the captain is not here now, and I will be back in the morning while the captain is here and we will straighten this out." Rosen: "All right." Captain Hand talked to Zinkiewycz right on deck, and he said that Captain Hand told him to go to work.

Q. Mr. Rosen, did you have any other discussion with Captain Hand the following day?

A. I did.

Q. Will you please relate that?

A. The next day, June 23, Captain Hand came aboard to talk to Captain Bergman about 9:00 a. m. After he left the captain's room I talked to Captain Hand, and had the following conversation.

Q. Talked to whom?

A. To Captain Hand: "I see you've got your socks on this morning." Rosen: "The deck is hot. I've got to wear them now." Hand: "Now, what was it you wanted to see me about?" Rosen: "I have been elected by the crew as delegate to ask you about working rules. The Texas Company claims they will give the best. However, all other companies live up to the minimum of the Standard Tanker Agreement. This minimum is one hour's pay for whatever is worked the first time called. However, on this ship we are called out at any hour, stand by until we are needed, sometimes as long as another hour, then we work a half hour and get a half hours overtime. One [211] instance

(Testimony of J. Gordon Rosen.)

when we were all on day work we worked until after 5:00 p.m.; in fact, until 5:25 p.m., and got nothing for it." Hand: "Well, how about the times when you worked five or ten minutes and get a half hours overtime, and when you work thirty-five or forty minutes you get an hours overtime for it, and you know when you are called out to work you boys all take a few minutes for a smoke or a cup of coffee to wake up on." Rosen: "The mate is very careful that we work the full half hour, and the other issue is that hour overtime is to start when we are called, if we are out on deck within fifteen minutes. All other companies are paying these things as minimum conditions before the National Maritime Union would recognize any signed agreement, and some companies, the Sinclair, for instance, in paying overtime for all work after 5:00 p. m. and before 8:00 a. m. If you wish to have a copy of the Standard Tanker Agreement, I have one in my locker, and I will get it for you." Hand: "No, no. We do not recognize any agreement, and we have no interest in any union tanker agreement. Our policy is that in the past we have, and in the future as long as The Texas Company remains in business, we will give our employees the best working conditions in the industry." Rosen: "I believe The Texas Company will follow this policy." Hand: "To be frank with you, I do not know what our other ships are doing in this matter. There are two of them in port. I will find out from the mates and

(Testimony of J. Gordon Rosen.)

captains and [212] let you know before you sail."

Rosen: "All right." However, we were in port two more days, but we received no further word from Captain Hand in this connection. Captain Hand did not contact me about this at any time.

Q. Now, on June 24, did you have a discussion with quartermaster Buckless?

A. Quartermaster Buckless and other quartermasters.

Q. Tell us about that. Tell us about the instance and the conversation?

A. About 12:30 at noon June 24, Quartermaster Buckless came to me and told me that the mate, Mr. Johansen, left word with the second mate, Mr. Carr, that Buckless was to go over the side and paint with the crew. I said this was contrary to the working rules. With Buckless, deck delegate Zinkiewicz and the other two quartermasters, West and Zihlruch we went up to the second mate, Mr. Carr, who was senior deck officer on watch, and had the following conversation. Carr: "What is this, a delegation?" Buckless: "Yes. The mate wants me to work over the side, and it is against the working rules of the Standard Tanker Agreement." Carr: "Yes, I know that. I told the mate I would not be responsible. I will go up and see the captain about this." [213]

Mr. Williams: Mr. Examiner, I suppose we will go along indefinitely along this line. What in the world is the competency whether certain seamen,

(Testimony of J. Gordon Rosen.)

able seamen or not, should go over the side and paint; what has that got to do with the charge in this case? It might have to do with a suit for extra wages or extra time. More especially, when he says that the rules he is referring to as having been violated are the rules of some other company, some other ship, or some other working agreement. This is not a controversy over overtime, nonpayment of wages or damages. He was put to doing work he thought he ought not to do. It seems to me we can go on forever about this matter, and never touch the charge or the complaint.

Mr. Martin: Mr. Examiner, the issue is whether Mr. Rosen was discharged for his union activities. That being the issue, any conversation with respect to anything even remotely related to union activities that Mr. Rosen had with any officer of the ship is pertinent to show, (1) that Mr. Rosen was engaged in union activities; and (2) that his union activities came to the attention of the officer or officers of the ship involved in the conversation. This testimony is offered, not for the truth or the merits of the substance of the conversation, but it is offered simply to show that here is a man who is being active on behalf of his fellow workers in a union, and that his activities are coming to the [214] attention of the officers of the ship. We are offering the substance of this conversation merely because I have to have it word for word in order to indicate that there was a conversation, and so

(Testimony of J. Gordon Rosen.)

that it cannot be claimed that he is fabricating the conversation. Here is a man who made notes right after each conversation, and now he is merely relating it to prove the two points I mentioned.

Mr. Pipkin: I understand you are not vouching for what he says?

Mr. Martin: It is not a matter of vouching. The conversations are not offered for the truth of the statements. The conversations are offered for the reasons I have mentioned.

Mr. Williams: Then if these conversations are not offered for the truth of the statements then they certainly have no place in any hearing in any civilized country.

Mr. Davis: I think what Mr. Martin means to say is that they are not offered to show or prove whether or not the problems which Mr. Rosen was talking about had merits in them. Now let the record show, for the benefit of counsel for the respondent, that we believe what this witness is saying is true, or we would not have him on the stand. But we don't care whether or not the problems that he was discussing with these different officers had merit or not. We simply want to know what he said, and what was said in turn by the officer to whom he was talking. [215]

Trial Examiner Myers: Is there a motion before me?

Mr. Williams: I move that all evidence as to these conversations the witness had with members of the crew as to whether or not they should or

(Testimony of J. Gordon Rosen.)

should not go over the side and paint the ship, or any part of it, be stricken, as having no relevancy whatsoever in this hearing. It is simply a controversy over some work, and not a controversy he injected himself into.

Trial Examiner Myers: I will deny the motion.

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Will you continue, Mr. Rosen? A. What was the last?

Trial Examiner Myers: You were telling about the conversation with the second mate.

Q. (By Mr. Martin) Will you continue, please?

A. With Buckless and the other quartermasters we had this conversation.

Q. You went up to see the mate on behalf of Buckless?

A. As a delegate of the crew.

Q. All right.

Trial Examiner Myers: Is this the chief mate?

A. He is the senior deck officer, in charge of the deck at that time. The chief mate was not present.

Q. The chief mate was not on board, is that what you mean to say? [216]

A. The chief mate was not on board.

Q. The captain was not on board?

A. The captain was on board, asleep in his room.

Q. This was the mate in charge of the ship?

A. He was.

Q. Do you know what his name was?

(Testimony of J. Gordon Rosen.)

A. His name was Carr.

Q. C-a-r-r? A. C-a-r-r.

Q. (By Mr. Martin) Proceed please.

A. Carr: "What is this, a delegation?"

Buckless: "Yes. The mate wants me to work over the side, and it is against the working rules. Here it is in black and white." We then showed him the working rules of the Standard Tanker Agreement.

Carr: "Yes, I know that. I told the mate I would not be responsible. I will go up and see the captain about this." He was gone a few minutes, and when he returned he said the captain told him it was the mate's orders and he would not change them. I then said the thing to do is to see the captain right now and settle this right now. We went to the captain, and had the following conversation.

Q. Relate that conversation.

Trial Examiner Myers: Who was in that conversation?

A. I was there as the ship's delegate. F. W. Zinkiewicz was [217] there as the deck delegate. Buckless was there as presenting the complaint. The other two quartermasters were there, Archie West and Ernest Zihlroch, both to see that they would not have to do the same thing.

Q. Was the mate there?

A. The second mate was not there. He was on deck attending to his duties. The captain was there at that time.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Continue, please.

A. And we had the following conversation.

Rosen: "Captain, there seems to be some confusion existing about these quartermasters working over the side. The mate left the order for the second mate, who says he will not be responsible, and he asked you about it and you said you would not be responsible either. Now we want to know who is responsible, because we think this is a case of overtime pay."

Captain Bergman: "Well, you are not a quartermaster. Who are you talking for?"

Rosen: "Zinkiewycz was elected deck delegate, and I was elected ship delegate to speak as representative of the crew."

Captain Bergman: "Now I want to tell you once and for all, I will not recognize any kind of delegates on my ship, and I am going to tell you the same thing I told Captain Hand. I am not required to recognize any delegate. When this fellow here," pointing to Zinkiewycz, "came up and spoke to me as a [218] delegate before, I did not have anything to do with him."

Rosen: "Well, Captain, that letter from Captain Roney pasted in the mess room says that according to the Wagner Act we have the right to choose our delegates."

Captain Bergman: "It says no such thing. I have all the letters here in my office." He produced the working rules, but not this specific letter.

(Testimony of J. Gordon Rosen.)

Rosen: "This is not the letter."

Captain Bergman: "There is no letter saying I have to recognize delegates."

Rosen: "In view of the fact that the N. M. U. was certified by the N. L. R. B. as sole collective bargaining agents for Texas Company ships and the N. L. R. B. gives us the right to elect delegates, do you still deny us our rights under this government law?"

Captain Bergman: "I have nothing to do with that. That is between you and The Texas Company. Now go along. I will talk to the quartermasters by themselves."

I didn't wish to dispute the captain's authority, and I asked Buckless and the other quartermasters if it would be satisfactory for me to leave, and they said yes, and I left, and F. W. Zinkiewicz left.

Trial Examiner Myers: Where was the boat at the time this conversation took place?

A. Docked in Port Arthur, Texas Company terminal. [219]

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) Mr. Rosen, did you have a discussion with chief engineer Dilbert on June 25?

A. I did.

Q. Will you tell me about that conversation?

A. I went up to the M. E. B. A. Hall and talked to Mr. Perridia, a representative of the M. E. B. A., affiliated with the C. I. O., which the N. M. U. is affiliated with.

(Testimony of J. Gordon Rosen.)

Q. Where was this?

A. In Port Arthur, on Saturday afternoon, June 25, about 6:00 p. m. I distributed circulars telling of an N. L. R. B. election on ships operating out of the Sabine area. These were from the M. E. B. A. I gave them to engineers Dilbert, Murphy and Gower, and had the following conversation.

Trial Examiner Myers: Where did you distribute it?

A. On board the ship, on the poop deck.

Q. What ship? A. S. S. "Washington".

Q. When you refer to the M. E. B. A. what organization do you mean?

A. Marine Engineers Beneficial Association.

Trial Examiner Myers: All right.

A. I had the following conversation. Dilbert: "How much do you get for all this secretarial work for the union?"

Rosen: "Nothing but the privilege of doing the work." [220]

That is all the conversation I had that particular time.

Q. (By Mr. Martin) Who was present other than you and Dilbert?

A. The other assistant, Mr. Murphy, and the other assistant, Mr. Gower, the other assistant engineer.

Mr. Williams: We make the same objection to that testimony.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Move to strike it out?

Mr. Williams: Move to strike it out.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Mr. Rosen, did you have a union meeting on Saturday evening, July 2?

A. We did.

Q. What transpired at that meeting?

A. A letter protesting Captain Bergman not recognizing elected delegates or living up to minimum working conditions was concurred in. This letter was written by myself and signed by the other department delegates. The letter was sent to Captain Roney, Maritime Superintendent for The Texas Company, New York. Two Western Union telegrams were sent from Chester, Pennsylvania, to Captain Roney on the same matter. We never received any answer.

Q. Was it addressed to him?

A. It was. Two telegrams were sent to Captain Roney in New York. One was sent by myself, as the minutes of the meeting provided for, at the Pennsylvania Railroad Station, [221] on July 4, in Chester, Pennsylvania.

Q. Addressed to Captain Roney?

A. It was sent to Captain Roney, and was as follows.

Q. Where was it sent from?

A. From the Pennsylvania Railroad Depot, Western Union telegram.

Q. Was it signed by you?

(Testimony of J. Gordon Rosen.)

A. Signed, Crew, S. S. "Washington".

Q. What did the telegram say?

A. "Protest Captain Bergman non-recognition of elected delegates on S. S. 'Washington', and also refusal to live up to minimum of Standard Tanker Agreement." It was never answered. Also the radio operator, whose name is William Kline, sent a similar telegram from this place, practically the same thing. He sent it as recording secretary for the meeting.

Mr. Williams: We move to strike the testimony in regard to the telegram and its contents, and also the letter, because it is not shown that the same was ever received by any officer for the respondent.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Mr. Rosen, where did the S. S. "Washington" arrive or dock at on Tuesday, July 11, 1938?

A. Docked at Anesville, Louisiana, across the river from New Orleans.

Q. What did you see from the boat? [222]

A. The crew of the Napoleon Avenue ferry, about 100 feet astern of us, were on strike. They were members of the inland boatman's division of the N. M. U. We went out and had conversations with them, and told them we were supporting them 100 per cent. However, we did not get a draw in that port, and we could not make very heavy contributions. We did contribute to some extent. Also the ferry was manned by strike breakers, and

(Testimony of J. Gordon Rosen.)

we thought it was our duty to discourage them. I had a large sign, about 13 feet long or 15 feet long, and about 4 feet high, on yellow cardboard, and we drew in large letters, very plain, on the sign the words, "C. I. O.," and hung it on the side directly facing the ferry on strike.

Q. Was this sign painted?

A. The sign was painted. The sign was on yellow cardboard, and painted with black paint. In the afternoon, on my watch below.

Q. That is during one of the 16 hours you were not supposed to be working? A. Yes, sir.

Q. What did you do with this sign?

A. Several members of the crew requested me to put out this sign. I drew it, and hung it up on the stern; and we showed the sign to the second mate, the second engineer, the chief engineer, Captain Bergman, but nothing was said about it. [223]

Q. Who showed it to them? A. I did.

Q. You took it upon the bridge?

A. The captain was looking back aft from the bridge, and we displayed it on the fore part of the poop deck, where it was in plain sight.

Q. You lifted it up so he could see it?

A. We did. And then we took it back and put it out on the side facing the New Orleans side, because there was a strike in New Orleans of the C. I. O. affiliate, and we put it in plain view of all the tugs coming down the river from New Orleans.

Q. Were any comments made with respect to

(Testimony of J. Gordon Rosen.)

this sign by any of the officers to whom you say you specifically pointed it out? A. Yes.

Q. What was said?

A. The second engineer, Mr. Gower, said we ought not to put that sign on.

Q. Anything else?

A. That is all I can remember.

Q. The captain said nothing?

A. He didn't at the time.

Q. Did he register any complaint?

A. No, sir. [224]

Q. Did he make any motions? A. No, sir.

Q. Were you close enough to be able to say by reading his face whether he was pleased or displeased? A. Very much displeased.

Mr. Williams: Your Honor, that is going too far afield. That is like trying to describe a smile.

Trial Examiner Myers: I agree with you.

Mr. Williams: We move to strike.

Trial Examiner Myers: Motion granted.

Mr. Martin: Will you read the question?

(The question was read by the reporter.)

Q. May we have an answer to the question. Were you close enough to see? A. Yes, I was.

Q. You were close enough to see? A. Yes.

Q. And what did you see?

A. The captain looked at it, and turned around and put his hands behind his back, and walked in his room and shut the door.

(Testimony of J. Gordon Rosen.)

Q. Approximately when did the "Washington" next stop at Port Arthur?

A. The day I got fired, about July 14.

Q. 1938? [225] A. Yes, sir.

Q. Did you do anything with this sign on July 14, 1938?

A. Yes. Coming up the channel we put the sign out in plain view of The Texas Company docks; and we came into the dock, and we put the sign on the side facing the dock. Several of the officials of the company looked at it, and members working on the dock and in the refinery. This was early in the morning.

Q. Who put the sign up?

A. Myself and Buckless.

Q. On this occasion did you specifically point the sign out to any of the officers aboard the ship?

A. No, sir, we did not on this specific occasion. We were too busy.

Q. Were any remarks made on this occasion by any officers of the ship?

A. Not that I remember. The sign was torn down by some one about 11:30. I went out on the dock and retrieved it and put it up again, with Buckless' assistance.

Q. Did you see it torn down?

A. No, sir, I didn't see it torn down. I saw it lying on the dock.

Q. On July 14, 1938, did Captain Hand board the ship? A. He did.

(Testimony of J. Gordon Rosen.)

Q. Did you have a conversation with him? [226]

A. Yes, sir.

Q. Will you please relate that conversation?

A. He spoke to me in a very hostile manner. Archie West was trying to talk to him, and as soon as he saw me he tried to ignore me. I went up amidships and told West to come up with me, and he tried to ignore me.

Q. Who went amidships?

A. Captain Hand was talking to the quartermaster, Archie West. Archie West had some grievance, and the captain was talking to him outside of the chief engineer's door. As soon as I approached he saw me coming, and he walked rapidly up amidships and tried to ignore me. I followed him amidships, and about the foot of the ladder I called his attention, and had the following conversation with him.

Trial Examiner Myers: Who was there beside you and Captain Hand?

A. Archie West was there, Two-Gun Myers, Alfred Wukasch, F. W. Zinkiewicz, L. Simmons, and others whom I do not recall.

Q. Is this the conversation you told us about before?

A. No, sir, this is a different conversation.

Q. All right, tell you about what took place this time.

A. Captain Hand spoke to me in a very hostile manner, he said: "What do you want?" And I

(Testimony of J. Gordon Rosen.)

said: "I would like to get some information." And he said: "Information on what?"

And I said: "In regard to the overtime question, for one [227] thing."

Hand: "What overtime?"

Rosen: "Did you come to a decision on the overtime question I talked to you about last trip?"

Hand: "Yes, I did; and I am getting damned tired of this. Now what overtime are you talking about? Whose overtime is it?"

Rosen: "This quartermaster, Archie West, for one."

Hand: "Well, who are you to do all the talking? What is your name?"

Rosen: "My name is Gordon Rosen, and I was elected ship's delegate to speak for the crew."

Hand: "Well, you are not a quartermaster. Now go along with you. I will talk to this quartermaster myself."

Rosen: "Speaking as a delegate, I am referring to the letter posted in the mess room giving us the right under the Wagner Act to elect representatives of the crew to speak for and bargain for the crew."

Hand: "There never was any such letter or any statement like that. We do not recognize any delegate or any representatives of the crew to speak or bargain for them. If you have any individual complaints, make them to me here now. Didn't

(Testimony of J. Gordon Rosen.)

the captain tell you this, that he wouldn't recognize any delegates?"

Rosen: "Yes." [228]

Hand: "Well, that is the way things are run in this company. Now have you any individual complaint?"

Rosen: "Yes. I would like to know why this mate calls us out and has us standing by for half an hour or more without paying us overtime."

The mate was called by Captain Hand.

Hand: "Mr. Johansen, this man says you have him standing by for half an hour, and they do not get any overtime for it."

Johansen: "I can get my overtime records and show that this man is a liar right now."

Hand: "Well, go get those records."

When the mate returned, I pointed out the instances on his own overtime record where the overtime disputes had arisen.

Rosen: "By the mate's own overtime record you can see, Captain Hand, that there are two separate times on this trip alone when we were called early in the morning and stood by for at least half an hour without receiving any overtime for it."

Hand: This said to Mr. Johansen: "Why don't you pay these men overtime from the time they are called?"

Johansen: "Well, the captain says that they must pay them only for the actual time they put in."

(Testimony of J. Gordon Rosen.)

Hand: "Well, I don't give a damn what the captain said. You pay these men this overtime."

[229]

Hand, to Rosen: "Is this all the dispute you have individually?"

Rosen: "Yes, this is the only individual dispute I have."

Hand: "Well, then run along. You will get your overtime."

However, we did not receive this overtime pay.

[230]

Trial Examiner Myers: You mean you never received it?

A. The other members of the crew told me they never received it.

Q. You did not receive it?

A. I never received it.

Q. (By Mr. Martin) Now, did anything happen of particular importance about noon that day?

A. Yes, sir, it did.

Q. Please relate that?

A. About noon delegate Zinkiewycz had put in his eight hours for the day. He went to the mate to get his pass to go ashore. He came back almost immediately and informed me that he had been fired again. He also said Buckless' and my name was on a slip, with total wages, on the mate's desk, and also signed discharge papers. Buckless and I went to the mate to find out if we were

(Testimony of J. Gordon Rosen.)

discharged, and had the following conversation with the mate. Rosen: "Why did Zinkiewycz just get fired?" Johanson: "For good reasons." Rosen: "Zinkiewycz told me that Buckless and I were also fired." Johanson: "How does he know?" Rosen: "Well, am I fired?" Johanson: "Not that I know of." Buckless: "Well, am I fired?" Johanson: "Well, you are still on the 12:00 to 4:00 watch, aren't you?" Buckless: "If I am fired I want to know it." The mate went in his room and wouldn't answer.

Trial Examiner Myers: What happened to the captain? [231] A. The captain went in his room.

Q. And left you two standing there?

A. Yes, sir.

Q. Nothing else was said at the conversation?

A. Buckless had some conversation further with the mate after I left.

Q. (By Mr. Martin) What if anything happened later that afternoon?

A. At 4:15 p. m. I was washing and the mate came back and told me he wanted to see me in his room. I went up to his room. Two Gun Myers was there. The mate said: "Here's some papers I want you to sign." Rosen: "You don't need to try to fool me. That's my discharge paper, and I am fired. Is that right?" Johanson: "Yes, I guess that's right." Rosen: "Just a few hours ago you told me I wasn't fired, and now, you tell me I am fired. What's the reason for this?" Johanson:

(Testimony of J. Gordon Rosen.)

“Reason? Well, you are not a seaman.” Rosen:
“Just what do you mean by that?” Johanson:
“Your seamanship is unsatisfactory. You don’t
know seamanship.” Rosen: “I don’t understand
how you can be a judge of seamanship. What par-
ticular instances can you think of where you would
have the ability to criticise my seamanship? Name
at least one or two.” Johanson: “I don’t have
to give you any reasons for firing you.” Rosen:
“Well, I have always tried to be a good seaman.
I want to know where I have failed, so that the
next ship I go on I will be as good [232] seaman
as you are.” Johanson: “I haven’t got anything
against your seamanship.”

Q. (By Mr. Martin) Mr. Rosen, if you work-
ers continue on the ship the next trip would the
papers be given to you in this same way they were
on this occasion, or would they be a different sort
of papers?

A. No, sir, they would not be the same.

Q. Wherein would they be different?

A. My only papers I receive is when I get fired
off the job, or quit, or resign. I sign the payroll,
and ship’s articles, but I don’t receive a final dis-
charge. I have the discharge here. It is only given
when my services are terminated with the company.

Q. Now, if you were to go on the next trip you
wouldn’t receive discharge papers? A. No, sir.

Q. You would receive nothing?

(Testimony of J. Gordon Rosen.)

A. Nothing. This service record is continuous, except when you sign on before a commissioner, and you receive a discharge for that trip; but coast-wise it is continuous.

Q. Do I understand correctly then, Mr. Rosen, that if you are to be continued on the boat you merely sign the ship's articles for the next trip?

A. Yes, sir.

Q. But if you are not to be on the next trip you are handed [233] your discharge? A. Yes.

Q. Now, will you please proceed and relate the conversation?

A. I said, "you don't need to try to fool me. That's my discharge paper and I am fired. Is that right?" And Johanson said: "Yes, I guess that is right." Rosen: "Just a few hours ago you told me I wasn't fired, and now you tell me I am fired. What's the reason for this?" Johanson: "Reason? Well, you are not a seaman." Rosen: "Just what do you mean by that?" Johanson: "Your seamanship is unsatisfactory. You don't know seamanship." Rosen: "I don't understand how you can be a judge of seamanship. What particular instances can you think of where you would have the ability to criticise my seamanship? Name at least one or two?" Johanson: "I don't have to give you any reasons for firing you." Rosen: "Well, I have always tried to be a good seaman. I want to know where I have failed, so that the next ship I go on I'll be as good a seaman as you are." Johanson: "I haven't got anything against your seamanship."

(Testimony of J. Gordon Rosen.)

Q. Continue please.

A. Rosen: "I am a plain spoken man and I see you have some good company witnesses here, but just what is behind all this firing, especially of the delegates? It hasn't anything to do with Captain Hand bawling you out this morning, has it?"

Johanson: "No." Rosen: "Well, don't be afraid to give me [234] the real reason then." Johanson:

"You drag along too slow. I got a lot of work to do on this ship. Why, last trip you were working on the deck four days and before you came on here I had two men that could paint these decks in a day."

Rosen: "In the first place how come you are always firing these good men? And, in the second place, if you remember, I never painted any of the deck."

Johanson: "That mast you were sooging, washing down, last trip took you a half day to finish, and I could do it myself in a couple of hours."

Rosen: "It took the boatswain and another A. B. working together a half day also to finish the other mast, and I finished mine in the same time working alone. Beside, all this happened last trip. You never said anything to me about this before."

Johanson: "Well, I thought I would give you another chance." Rosen: "I can see that we are just

going around in circles here. There's too many witnesses here. I am going out and call up Captain Hand. Do you think he is still in his office?"

Two Gun Myers: "Captain Hand left his office a long time ago and will not be back tonight." Rosen:

"Well, how about giving me a pass so I can go

(Testimony of J. Gordon Rosen.)

ashore?" Two Gun Myers: "You are not coming back aboard these ships. You won't need a pass to get out." And then I went upon the dock and phoned Captain Hand and had the following conversation with him over the phone.

Q. Please relate that conversation?

A. Captain Hand answered the phone, and I said: "After the [235] discussion I had with you and with the mate on the "Washington" I got fired, and no definite reason was given. I do not believe that you would allow such unfair labor practices on Texas Company ships if you knew about it." Hand: "What are you talking about?" Rosen: "I am that A. B. on the "Washington" that brought up the question of half hours overtime, and you bawled the mate out about it. He fired me for this." Hand: "I don't know a thing about it." Rosen: "That's why I'm bringing it to your attention so you'll do something about it." [236]

Hand: "I can't leave the office right now. I have got too much work to attend to."

Rosen: "I want to get this matter straightened out before the ship sails."

Hand: "I will look into the matter."

Rosen: "How soon, tomorrow morning?"

Hand: "Yes, call me up tomorrow morning." And he hung up.

Q. Mr. Rosen, refreshing your recollection from notes made of conversations on the S. S. "Washington", are there any other conversations that you had aboard that ship that you wish to relate?

(Testimony of J. Gordon Rosen.)

A. Aboard the ship, I had several conversations with different members of the crew. We voted on June 11th——

Q. No, I refer to conversations with officers of the ship.

A. I had several but I don't recollect all of them.

Trial Examiner Myers: At the request of counsel for the Board, we will take a five minute recess.

(Thereupon a short recess was taken.)

Trial Examiner Myers: Are you ready to proceed?

Mr. Martin: We are, Mr. Examiner.

Please mark this.

(The document was marked "Board's Exhibit No. 9", for identification.)

Q. Mr. Rosen, I hand you a document and ask you to tell me what it is? [237]

A. That is an open letter to Texas Company seamen. On or about July 11, we had a special meeting on board the S. S. "Washington", and I drafted a letter, which I have here, in my own handwriting and read it to the crew. And they voted to have it printed and circulated amongst the other Texas Company ships, and send copy of it to The Texas Company officials. In that open letter we pointed out some specific things on Texas Company ships we believed were detrimental to the welfare of the N. M. U. members.

(Testimony of J. Gordon Rosen.)

Q. Mr. Rosen, I note that one of the signatures at the bottom of that letter is yours. A. Yes, sir.

Q. Did you authorize your name to go on that letter?

A. Yes, sir. I signed the original letter; also F. W. Zinkilswycz.

Q. Where was the letter printed?

A. At the White House Printing Company, Proctor Street, Port Arthur.

Q. And who had charge of the distributing of that letter?

A. I did, officials of the Union, and delegates.

Q. From where was it distributed?

A. Port Arthur branch of the Union.

Q. Union hall? A. Yes, sir.

Q. And to whom was it distributed, and how?

[238]

A. It was distributed particularly to Texas Company ships, by mail, personal contacts, and I stayed at the gate and handed it to men as they came on and off of ships.

Q. Approximately how many ships?

A. About ten or fifteen ships all together.

Q. Ten or fifteen ships to which it was distributed all together?

A. Yes, sir, that I know of. There might have been more, but those are the ones I know of.

Q. How many letters were distributed? How many were made?

A. About seven hundred and fifty copies.

(Testimony of J. Gordon Rosen.)

Q. All were distributed?

A. I am sure all of them were, yes, sir.

Q. Did you say copies were mailed to officers of the company?

A. Copies were mailed to officers of the company, yes, sir.

Q. What officers?

A. J. P. Roney, G. L. Hand, Mr. Meyers——

Q. Mr. E. Meyers? A. Pistol Meyers.

Q. Is Pistol Meyers the same as Two Gun Meyers? A. That is the same man.

Q. You said that you personally distributed these letters to members of certain crews as they came off the gang plank. [239]

A. No, sir, at the gate.

Q. You distributed them to those crews when they were in port? A. Yes, sir, at the gate.

Trial Examiner Myers: Stood at the gate?

A. At the gate.

Mr. Martin: Mr. Examiner, I offer in evidence what has been identified as Board's Exhibit No. 9, as being typed copy of letter entitled, "An open letter to Texas Company seamen," and signed by the crew of the SS "Washington" and four individuals of that crew.

Trial Examiner Myers: Any objection to that exhibit going in evidence.

Mr. Williams: We make the same objection to this Exhibit No. 9 that was made to the Exhibit No. 8, I believe, that mimeographed letter.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Objection overruled. I will ask the reporter to please mark Board's Exhibit No. 9 for identification in evidence as Board's Exhibit No. 9. I also ask the reporter to please note an exception for Judge Williams.

(The document heretofore marked "Board's Exhibit No. 9 for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 9

An Open Letter to Texas Co. Seamen

Verbal contracts with the Texas Co. are worthless.

Some eight months ago a letter from the head of the Marine Department was sent aboard all Texas Co. ships giving definite assurance that the Texas Co. will always give their Seamen the best conditions in the industry, that they will not discriminate against any Union men, that they will listen to complaints at all times. Both the New York offices will state these things to you verbally. But between the giving of these promises and the living up to these promises there is a vast amount of inconsistency.

The Texas Company promises the best. It has been pointed out to this Company that the Standard Tanker Agreement was a minimum set of conditions that the National Maritime Union would agree to exchange for a signed contract, yet there are at least Twenty (20) different clauses in these minimum conditions that the Texas Company refuses to live up to.

(Testimony of J. Gordon Rosen.)

This can hardly be called giving the best conditions in the industry, since there are other companies giving a great deal more than the Standard Tanker Agreement, such as the Sinclair Co.—Overtime after 5:00 p. m., and before 8:00 a. m., and a straight 8-hour day for the Stewards Dept., in port: The Gulf Co., granting a large cash bonus to seamen who had been in their ships 6 months continuously. The Tide Water Co., serving fresh milk and the best grade of food at all times. The Standard Oil with a larger manning scale than the Texas Co., and other Companies granting like conditions.

When we attempt to point out these conditions to the Texas Co. officials they tell us the Captains are running the ships. After long wrangles with the Captains and heads of the departments the friction and irritation has produced enough heat and ill-feeling that the port officials are forced to step in again. These gentlemen give us all sorts of fine speeches and fine promises but nothing else which would add one penny to the expense account.

We have sent letters and telegrams to the main office and they have been absolutely ignored. This is not fair dealing, this is simple evasion.

When ship's delegates get to the point where they begin asking the company to live up to their promises, word is sent down from the main office that these men are not working to the best interests of the Texas Company the matter should be looked

(Testimony of J. Gordon Rosen.)

into. It is the delegates that get fired! We have positive proof that these messages have been sent! It has taken nine (9) N.L.R.B. cases to put a temporary stop to this practice.

When the N.L.R.B. held elections to determine collective bargaining agents for the Texas Company ships, the N.M.U. was certified by an 85% majority. Did the Texas Company play fair and re-hire the 85% of their old employees whom they suspected of belonging to the N.M.U.? We have positive proof that the Texas Company at Port Arthur alone went out of their way to discriminate against N. M. U. employees by hiring 85% non-union men. This is a flagrant violation of the Wagner Act and all of its provisions.

Matters have reached a point in the Texas Company where officials are going through the plants and refineries and asking all ex-seamen employed there to act as strike-breakers on the ships should NMU demand their just rights under the Wagner Act. We call upon all Texas Company ships to adopt a program that will enable us to get written assurances that the Texas Company will live up to their verbal agreements and that they will dispense with all unfair labor practices.

A program should be adopted on your ship to:

(1) Elect from your ship or authorize a representative from another Texas Company Ship to act on a negotiating committee (and with the full sanction of the District Committee of the NMU)

(Testimony of J. Gordon Rosen.)

to bargain collectively for a written guarantee of non-union discrimination and that the best standards in the industry will be recognized aboard Texas Company ships.

(2) Send letters and telegrams immediately to the head office of the Texas Company requesting that NMU delegates be allowed aboard Texas Company ships to settle disputes that are now creating a great deal of irritation aboard the Texas Company ships.

(3) After the biased action of the Texas Company in the past it is only fair to former employees who voted 85% for the N. M. U., that no new members be allowed aboard the Texas Co. ships without an N. M. U. book, in order to maintain this N.L.R.B. ratio.

100% N. M. U. Crew,

S/S Washington.

Deck Delegate,

FELIX W. ZINKIEWYCZ,

Engine Delegate,

JACK KEANE,

Steward Dept. Delegate,

CECIL McDONALD,

Ship Delegate,

GORDON ROSEN.

Q. (By Mr. Martin) Mr. Rosen, have you talked with anybody who has said that he saw

(Testimony of J. Gordon Rosen.)

a copy of this letter on board [240] Texas Company ship? A. Yes, I did.

Q. Who was that person or persons?

A. Able seaman by the name of Morgan on the SS "Louisiana".

Q. What did he say?

A. He said he had seen that letter.

Mr. Williams: We object to hearsay.

Trial Examiner Myers: Read question and answer.

(Question and answer were read by the reporter.)

A. He said he had seen the letter, and brought it to the attention of the ship's delegate, a man by the name of C. R. Shaw.

Q. Where did he see the letter?

A. On board the SS "Louisiana."

Q. Pinned up somewhere?

A. He said it was in the mess room, but he didn't say pinned up, or what condition it was in.

Q. On the bulletin board in the mess hall?

A. He didn't state that.

Q. He said he saw it?

A. Yes, sir. He said Delegate, C. R. Shaw had it. He had several of them.

Trial Examiner Myers: I will see if he connects it up.

Q. (By Mr. Martin) Any others?

A. Yes, sir, another seaman by the name of George Hart, [241] on this same ship.

Q. This is the same George Hart who was also on the "Nevada"? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Quartermaster Hart?

A. He was quartermaster on the "Nevada".

Q. What did he say?

A. He said: "I saw your letter that you sent out. I think it was a very good letter." That is the only comment he made at that particular time.

Mr. Williams: We renew the objections, and ask that it be stricken.

Trial Examiner Myers: I will strike it out.

Mr. Davis: Mr. Examiner, I see no reason why that type of evidence cannot remain in. It certainly shows union activity. I don't know whether the inference can be drawn that officials on board this particular ship saw this notice or not, but if the inference cannot be drawn then certainly it does not hurt the respondent.

Trial Examiner Myers: Well, the testimony is that somebody told him that they saw it on board ship. I will stand by my original ruling and strike it.

Q. (By Mr. Martin) Mr. Rosen, have you worked for The Texas Company since July 14, 1938?

A. No, I have not.

Q. You have not worked for The Texas Company since July 14, 1938? [242]

A. I have not.

Q. What was your rate of pay on the SS "Washington"?

A. Eighty-five dollars a month, plus overtime.

Q. Is that in addition to meals and room aboard the boat?

(Testimony of J. Gordon Rosen.)

A. That is in addition, subsistence, so called.

Q. And all of the salaries you have mentioned with respect to other boats you have worked on, are in addition to room and meals?

A. They are.

Trial Examiner Myers: Do you get free meals and board while you are on board?

A. Yes, sir, at all times, and in all ports.

Q. That is true about each and every port?

A. Yes, sir.

Q. Have you been employed elsewhere since the 14th of July, 1938? A. I have not.

Q. Have you received monies from any government, state or municipality——

A. I have not.

Q. By way of unemployment relief, W. P. A., or social security?

A. Seamen are not eligible to social security.

Q. Did you receive it? A. No, sir.

Trial Examiner Myers: Any other questions?

[243]

Q. (By Mr. Martin) Mr. Rosen, do you wish to go back to work for The Texas Company, Marine Division?

A. Yes, sir. I registered for that purpose with the Seamen's Church Institute on the Texas list.

Q. Have you been called?

A. No, sir, I have never been called.

Q. Will you explain just briefly the procedure at the Seamen's Institute?

A. Well, according to their own rules——

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Whose rules?

A. The Seamen's Church Institute. Those rules are formed, the Seamen's Church Institute, so called, those rules are formed and the man that is there the longest is supposed to have the number one position on The Texas Company list, if he has had previous service with that company. The next man with the next amount of service gets number two position.

Mr. Williams: We move to strike the answer, the question and the answer, especially the answer, for the reason that there is no showing made that those rules bind the respondent in any manner shape or form.

Trial Examiner Myers: Well, the testimony is that if they want a seaman, they call up the Seamen's Church Institute. Now, the question is how the Seamen's Church Institute works.

Mr. Williams: The rules would be the best evidence. We want to make the exception that the respondent would not be [244] bound by any rules that the Seamen's Church Institute might have.

Trial Examiner Myers: Let's go along.

Mr. Martin: Mr. Examiner, to avoid possibly any discussion of the inner-working of the Seamen's Church Institute, we simply want to show that the witness tried to go back to work, and failed.

Trial Examiner Myers: I have ruled.

Mr. Williams: Note our exceptions.

Trial Examiner Myers: I deny the motion.

(Testimony of J. Gordon Rosen.)

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Mr. Rosen, is there a separate list for The Texas Company ships?

A. Yes, sir, there is.

Q. A separate list? A. Yes, sir, there is.

Q. From your testimony, I understand that the top man on the list has the first chance at a job, if he qualifies for the job.

A. Yes, sir, he is supposed to.

Q. And then if he accepts it, the second man becomes the first man on the list? A. Yes, sir.

Q. And so on? A. Yes, sir. [245]

Trial Examiner Myers: How do you become top man?

A. Well, the man on top, if he ships out is removed from the list. He might leave town, and then he is removed from the list, because he has to call in every Monday morning from eight to twelve. That is a Texas Company rule. If he is not there at any time, he is dropped from the list; except the men on relief trips, I believe, are supposed to be allowed to miss, I believe, two roll calls. [246]

Q. If the No. 1 man on the list is offered a job and he refuses it, does he remain on top of the list?

A. Ordinarily he does.

Q. And the second man on the list has the crack at the job? A. Yes.

Q. Now have you ever been top man on the list for The Texas Company ships at the Seamen's Institute since July 14, 1938?

(Testimony of J. Gordon Rosen.)

A. Not at the very top, no, sir.

Q. What is the highest you have been on that list?

A. I was No. 18 on the list about three weeks ago. Now my number is about 8.

Q. Have men below you on that list been hired during the period your name has been on it for service on Texas Company ships?

A. Yes, sir, they have.

Q. Able-bodied seamen?

A. Able-bodied seamen.

Q. Has your name first been called?

A. My name was never called.

Q. Your name was never called?

A. No, sir.

Trial Examiner Myers: Did you make any inquiries why your name was not called?

A. I did. [247]

Q. Of whom did you make inquiries?

A. The man that is supposed to do the shipping that calls us in there, in general charge of the office. His name is Dave.

Q. Seamen's Church Institute?

A. Yes, sir.

Q. What did he say?

A. He said—there was another man there first. We were both skipped. The other man asked, "Has my name been dropped off the list?" And he said: "I don't know anything about that. You will have to see Mr. Meyers," and turned away. I asked him

(Testimony of J. Gordon Rosen.)

if Mr. Meyers refused to ship me; and he says: "I don't know. You will have to see Mr. Meyers about that."

Q. And then he called the name of somebody below you?

A. Before that he had called the names out. He went on down the list until he got to the name of Rufus Andrews. He skipped him, and he called the name of a man, able seaman, between Rufus Andrews and myself; and he skipped me, and he called the name of the man below me, and he wasn't there; and the next man below me who was there, John Smith, took the job.

Q. Able-bodied seaman?

A. Able-bodied seaman.

Q. What boat? A. "Alabama". [248]

Q. Do you know the approximate date?

A. It was Saturday before Labor Day, I believe. It was on Saturday morning preceding Labor Day.

Q. 1938? A. Yes, sir.

Q. After this instance did you speak to Mr. Meyers, or attempt to?

A. I tried to call him up, and he wouldn't answer.

Q. This is Mr. G. E. Meyers?

A. Yes, sir.

Trial Examiner Myers: What do you mean by he wouldn't answer?

A. I called him up on the phone, and started to mention my name, and he hung up the receiver.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Were you talking with him? A. Yes, sir.

Q. Not his secretary? A. No, sir.

Q. He hung up while you were talking?

A. He did.

Q. Did you then go to his office?

A. No, sir.

Q. You considered you were not wanted?

A. Well, I didn't know what was going on.

Q. Have you made any other attempts since July 14, 1938, to [249] get a job with The Texas Company, Marine Division? A. Yes, sir.

Q. What attempts?

A. I called up Captain Hand.

Q. About when? A. About July 16.

Q. Did you speak with Captain Hand personally?

A. Yes, sir, I did.

Q. What was said in that conversation?

A. I said: "Captain Hand, I was fired off the 'Washington', and you said you would look into it."

He said: "Yes."

I said: "You know they have made no attempt to do anything about it."

And he said: "I don't know anything about that."

And I said: "You know I was discriminated against."

And he said: "I never said anything like that."

I said: "Well, I filed a complaint with the Labor Board."

(Testimony of J. Gordon Rosen.)

And he said: "That is in the hands of the New York office. They are over my head."

And I said: "How about getting a job back again?"

And he said: "I will look into it again," and hung up.

Q. Have you called him since?

A. No, sir, not since.

Q. Mr. Rosen, are you registered on the shipping list at the [250] National Maritime Union, Port Arthur Branch, Hall?

A. Yes, sir.

Q. Have you been so listed since July 14, 1938?

A. Yes, sir, I have.

Q. Mr. Rosen, have you worked for any other company since July 14, 1938?

A. No, sir, I never have.

Q. Have you had any occupation on land——

Trial Examiner Myers: He said he has not received any money whatsoever since the 14th of July. I asked him.

Q. (By Mr. Martin) Are you able to work at present?

A. Yes, sir.

Q. Physically able?

A. Yes, sir.

Q. During that entire period since July 14, 1938, you have been able?

A. Yes, sir.

Q. Do you know what your overtime average is on each of the three Texas Company boats from which you have been discharged?

A. It probably was more on the "Nevada" than on any other ship, because the "Nevada" after I

(Testimony of J. Gordon Rosen.)

was fired off of her went into dry dock. They cleaned the tanks and made a great deal of additional overtime cleaning tanks. However, I don't know approximately the exact amount they made.

Q. Could you make an estimate of the average on the three [251] ships?

A. The average amount of overtime on the ship?

Q. Yes, the average amount of your overtime on the three ships.

A. The average amount of overtime amounted to between seven and ten dollars a month.

Mr. Martin: Your witness.

Mr. Van Dusen: Mr. Examiner, this witness has been on the stand practically all day, and has attributed a lot of statements to many individuals. I would like, with your permission, the privilege of cross examining him tomorrow, if Mr. Davis is willing. I think it would facilitate matters. I would have to proceed perhaps very slowly otherwise.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: Then do you withdraw your request?

Mr. Van Dusen: Yes, sir. May I have a few minutes recess, please?

Trial Examiner Myers: Yes, sir.

(Short recess.)

Cross Examination

Q. (By Mr. Van Dusen) Mr. Rosen, you say that you have been a seaman for ten years, approximately ten years?

(Testimony of J. Gordon Rosen.)

A. Approximately, yes, sir.

Q. And an A. B. for approximately six years?

[252]

A. Yes, sir.

Q. So that you became an A. B. some time during the year 1932? Is that correct, this being 1938?

A. Approximately, yes, sir.

Q. Now you testified that since 1935 you were on three ships of The Texas Company, the "Nevada", "California" and "Washington"?

A. Yes, sir.

Q. You were on the "Nevada" twice?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now your first trip on the "Nevada" was approximately, according to your testimony, October 22, 1935, is that correct?

A. About that time, yes, sir.

Q. And expired February 2, 1936?

A. Approximately, yes, sir.

Q. On that trip you signed the customary shipping articles, did you not?

A. Yes, sir. They were a little different to the ones that they have in effect now.

Q. Now when you left the SS "Nevada" on February 2, 1936, you left of your own accord, that is correct, is it not? A. Yes. [253]

Q. You were not employed on a Texas Company ship, or you did not sign shipping articles on a Texas Company ship, until June 30, 1937, when you

(Testimony of J. Gordon Rosen.)

signed articles on the SS "California", is that correct? A. Yes, sir.

Q. Now there is approximately 17 months interval there. What were you doing in that interval?

A. I was on strike about four months of that time.

Q. Suppose you start with your leaving the SS "Nevada" February 2, 1936. I believe you said you left at New Orleans, is that correct?

A. Yes, sir.

Q. What did you do?

A. I shipped on the Mississippi Shipping Company SS "Afel", and later changed—

Q. How long were you with that company?

A. Approximately six months.

Q. Approximately six months?

A. Yes, sir.

Q. Then you say for a portion of that time you were on strike? A. Yes, sir.

Q. In connection with that company?

A. No, sir.

Q. Well, did you voluntarily leave the employ of that [254] company? A. I did.

Q. Were you hired on the vessel of any other company? A. I was.

Q. What vessel?

A. The SS "Fairport", Waterman Steamship Company.

Q. How long were you with that company?

A. Approximately two months.

(Testimony of J. Gordon Rosen.)

Q. And then did you leave that vessel?

A. Yes, sir.

Q. Of your own accord?

A. I went on strike.

Q. For how long were you on strike?

A. Until February 4, 1937.

Q. 1937? A. Yes, sir.

Q. And then where were you employed, if at all?

A. I was unemployed until about March 3, 1937, and I joined the SS "Point Caleta" of the Swayne & Hoyt Steamship Company.

Q. And how long were you with that company?

A. Three and a half months.

Q. Three and a half months? A. Yes, sir.

Q. That takes you to about May, 1937?

A. June, 1937. [255]

Q. And then did you quit that vessel of your own accord? A. I did.

Q. Were you reemployed on any other vessel?

A. I went on The Texas Company ship.

Q. And that was on June 30, 1937?

A. Yes, sir.

Q. How did it happen that you signed articles on the SS "California"; what were the circumstances, where did you apply?

A. I went down to the Seamen's Institute. He said, "Where have you been all this time?"

Q. Who said that?

A. Dave, the man that does the shipping.

Q. You were put on the list at the Seamen's Institute? A. Not on the Texas Company list.

(Testimony of J. Gordon Rosen.)

Q. You were put on the list? A. Yes, sir.

Q. Did you ask to be put on The Texas Company list? A. I did.

Q. And he didn't put you on? A. No.

Q. How long was it before you obtained employment after you were put on the list?

A. About one day after I was put on the open list. There was a shortage of A. B.'s at that time.

[256]

Trial Examiner Myers: Is there a shortage of A. B.'s at the present time?

A. No, there is not.

Mr. Van Dusen: Apparently not. Yesterday Mr. Davis asked me to bring in copy of the forms of shipping articles used for foreign trips, and also for coastwise. I have these here.

Q. I show you shipping articles dated Port Arthur, June 29, 1937, and ask you to look over the list and see if your signature is on there.

A. Yes, sir, it is right here.

Q. Those are shipping articles you signed at the time you hired on the SS "California"?

A. No, I don't believe I signed them until the next day?

Q. It covers the trip? A. Yes, sir.

Q. On or about June 29, 1937? Is that correct?

A. Yes, sir.

Q. These shipping articles, these are what you call intercoastal?

A. No, sir, those are coastwise articles.

(Testimony of J. Gordon Rosen.)

Q. By intercoastal I mean from east to west, Atlantic to Pacific.

A. These are not intercoastal shipping articles.

Q. Aren't they signed before a Commissioner?
[257]

A. No, sir, they are not.

Q. I ask you if these shipping articles do not provide, that they read Port Arthur, Texas, to Baltimore, Maryland, and to be paid off at Port Arthur, Port Neches, or Sabine District, and such other ports and places, at any port of the U. S. East Coast as the master may direct, and back to final port of discharge, not to exceed two calendar months?

A. I believe that is written in there.

Mr. Van Dusen: I will ask that this be marked for identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 1 for identification.)

Q. I show you shipping articles dated Port Arthur, July 17, 1937, and ask you if you signed those shipping articles?

A. There seems to be some mistake here. This name is scratched out, and my mother's name is written over there.

Q. That is your name right here?

A. Yes. My name is over here. But in the place where my permanent address is given, we have the next of kin, and another name has been inserted and

(Testimony of J. Gordon Rosen.)

scratched out, and my mother's name put over to the extreme outer edge.

Q. All I am asking is whether you signed these particular shipping articles?

A. Yes, sir, that is my signature over here.

Mr. Van Dusen: I will ask that these be marked for [258] identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 2 for identification.) [259]

Q. (By Mr. Van Dusen) Didn't you testify that you gave your mother's address in Wisconsin in the shipping articles? A. I did.

Q. Isn't that what appears in these shipping articles? A. Well, not in the proper place.

Q. Well, it is on there, isn't it? A. It is.

Q. Now, I show you shipping articles dated Port Arthur, August, 1937, and ask you if you signed those shipping articles?

A. Yes, that is my signature.

Mr. Van Dusen: I ask to have it marked for identification.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 3" for identification.)

Q. (By Mr. Van Dusen) I show you shipping articles dated Port Arthur, August 21, 1937, and ask if you signed those.

A. Yes, that is my signature.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I ask that this be marked for identification.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 4" for identification.)

Q. (By Mr. Van Dusen) Now, you testified on direct examination that you were on the SS "California" from June 30, 1937, [260] to September 21, 1937?

A. Not, till September 21.

Q. Or September 19? Which was it?

A. Approximately on or about the 19th.

Q. On or about? A. Yes, sir.

Q. Now, these are the various shipping articles covering that period of time, isn't that correct?

A. That is right.

Q. In other words, Port Arthur was the usual pay-off point, was it not?

A. It was.

Q. And at Port Arthur when you were paid off you signed new articles?

A. That is right.

Q. Now, after you left the SS "California" on or about September 19 or 18, 1937, where did you go?

A. I registered down at the Seamen's Institute.

Q. On The Texas Company list?

A. On The Texas Company list.

Q. Did you register with the N. M. U.?

A. Yes, I registered with the N. M. U.

Q. Did you get a job?

A. No, I didn't. Not on a Texas Company ship.

(Testimony of J. Gordon Rosen.)

Q. Did you get a job on any other ship?

A. Yes, a Gulf Company ship. [261]

Q. About what date?

A. Oh, several days later.

Q. Several days after you registered, is that correct?

A. Yes.

Q. Did you get a job as an A. B. seaman?

A. As an A. B. seaman.

Q. Do you know the name of the ship?

A. The "Gulfbelle."

Q. Did you sign shipping articles on that ship?

A. I did.

Q. Was that a coastwise or a foreign voyage?

A. Coastwise.

Q. How long were you on that ship?

A. Approximately two months.

Q. Approximately two months?

A. Yes, sir.

Q. What was your rate of pay on that ship?

Mr. Davis: Object to that as being immaterial.

Mr. Van Dusen: Just a minute, Mr. Examiner.

Trial Examiner Myers: What is the trouble?

Mr. Van Dusen: He is objecting to it.

Trial Examiner Myers: Who is?

Mr. Van Dusen: Mr. Davis is.

Trial Examiner Myers: I didn't hear the objection. I am sorry.

Mr. Van Dusen: Aren't you objecting, Mr. Davis? [262]

Mr. Davis: Yes, I am objecting. He is asking

(Testimony of J. Gordon Rosen.)

for his rate of pay on a ship not owned by The Texas Company.

Mr. Van Dusen: Now, let me make this statement, Mr. Examiner.

Trial Examiner Myers: Well, the objection is overruled. Go ahead.

Mr. Van Dusen: Thank you.

Q. (By Mr. Van Dusen) Your rate of pay on the Gulf ship.

A. \$85 per month, plus overtime.

Q. What were you getting on the "California"?

A. \$80 a month, without overtime.

There is a correction there. \$80 a month on the "Gulfbelle" with overtime.

Q. \$80 a month on the "Gulfbelle" with overtime?
A. With overtime.

Q. What were you getting on the "California"?

A. \$80 a month, without overtime.

Q. And you say the overtime amounts approximately to \$7 per month? Was that your estimate on direct examination?

A. That is my estimate, yes, sir.

Q. You were on that Gulf ship for two months?

A. I was.

Q. Did you quit that ship? A. I did.

Q. You were not discharged?

A. No, I was not. [263]

Q. Did you then seek employment on some other ship?

A. Yes, I did. I registered at the Seamen's Institute again on The Texas Company's list.

(Testimony of J. Gordon Rosen.)

Q. Why didn't you stay on the Gulf ship?

A. The "Gulfbelle"?

Q. Yes.

Mr. Davis: I object to that as being immaterial.

Trial Examiner Myers: If you are making an objection I wish you would make it a little louder. What was it you said? I didn't hear you.

Mr. Davis: I object to that as being irrelevant and immaterial as to why he quit.

Trial Examiner Myers: Overruled.

A. I wanted a warmer run. The "Gulfbelle" was running to Providence and it was getting late in the year and that ship makes about sixteen knots an hour and it was very uncomfortable on that ship.

Q. (By Mr. Van Dusen) How long after you left the "Gulfbelle" did you obtain employment on some other ship? A. Approximately a week.

Q. On what ship were you then employed?

A. The "Gulfgem."

Q. Did you sign shipping articles on that ship?

A. I did.

Q. How long were you on that ship?

A. Approximately two months. [264]

Q. Approximately two months?

A. Yes, sir.

Q. Were you an A. B. seaman on that ship?

A. I was.

Q. What was your rate of pay?

A. \$80 a month, plus overtime.

(Testimony of J. Gordon Rosen.)

Q. Did you quit that ship? A. I did.

Q. Voluntarily? A. Yes.

Q. Why did you leave that ship?

A. For the same reason I left the "Gulfbelle." She was going North and I didn't wish to go North on any ship.

Q. What was the approximate date you left that ship?

A. I will have to look at my discharge to get the exact date.

Q. Will you do that, please?

A. It was the first part of December.

Q. Of 1937? A. 1937. 12-23-37.

Q. Did you then register with the Seamens Institute? A. I did.

Q. Did you register with the N. M. U.?

A. I did.

Q. And how long was it before you were employed on another ship? [265]

A. January 10, 1938.

Q. Was that when you signed shipping articles on the SS "Nevada"? A. I did.

Q. That was approximately two weeks, would you say, that you were not employed?

A. Closer to three weeks.

Q. Three weeks? A. Yes, sir.

Q. Did you make any effort to obtain employment elsewhere?

A. Only at The Texas Company and at the National Maritime Union hall.

(Testimony of J. Gordon Rosen.)

Q. You obtained no other employment at that time? A. No.

Q. And had no other source of income?

A. No.

Q. You signed the customary shipping articles on the SS "Nevada"? A. No, I didn't.

A. Not the customary articles.

Q. Well, I mean you signed shipping articles?

A. Yes, I did.

Q. Did that vessel make a coastwise trip at that time? A. No, it made a foreign trip.

Q. A foreign trip? [266] A. Yes.

Q. Where did it go? That was the trip where you went to Bilboa, Spain, and those points?

A. It went to three ports in Spain.

Q. Now, you said that you left the SS "Nevada" on or about July 18, 1938, is that correct?

A. I think the 19th is the correct date.

Q. The 19th?

A. Yes. I looked that up on my discharges.

Q. Or rather, April. I am sorry. April 18?

A. April 18.

Q. Now, how long were you unemployed between the time that you left the SS "Nevada" and the time you signed shipping articles on the SS "Washington"? A. Till June 1, 1938.

Q. When you left the SS "Nevada" did you register with the Seamens Church Institute?

A. I did.

Q. You did? A. I did.

(Testimony of J. Gordon Rosen.)

Q. Did you register with the N. M. U.?

A. I did.

Q. Did you obtain employment on any ship?

A. Yes, I did.

Q. What ship?

A. The SS "Washington." [267]

Q. I mean in that interval?

A. No, nothing in that interval.

Q. And there is approximately ten months there, is that right? A. No, sir.

Q. Oh, I am sorry. One month. A little over a month? A. About six weeks.

Q. And you were not employed on any ship during those six weeks? A. I was not.

Trial Examiner Myers: If I may interrupt, what is the purpose, Mr. Rosen, of getting off one ship and then going down to the Seamens Institute and signing up on The Texas Company's list?

A. Well, I tried to get back with The Texas Company because they were unorganized and I felt as long as they were unorganized it was the duty of every member of the union to concentrate on that company until they did become organized.

Trial Examiner Myers: I am talking about when you got off the "California" and came back to Port Arthur. You quit your job there and went down to the Seamens Church Institute and signed on The Texas Company's list. What is the purpose of that?

A. Well, that is the only way I know of to ship on the Texas Company is to register on The Texas Company's list at the Institute. [268]

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: But you were on the boat and you say you quit voluntarily.

A. Not on the "California." I was fired off the "California."

Trial Examiner Myers: Well, take the "Nevada."

A. I got fired off the "Nevada" the second time.

Q. (By Mr. Van Dusen) What about the Gulf boats?

A. I quit off the Gulf boats, yes, sir.

Q. For the purpose of registering to get on a Texas Company boat? A. No, sir.

Q. Wasn't that the real reason?

A. No. For the purpose of employment.

Q. You wanted to organize the men on The Texas Company boats, didn't you?

A. If possible.

Trial Examiner Myers: I only asked the question with reference to getting off the different Texas Company boats and then going down and registering on The Texas Company list.

Q. (By Mr. Van Dusen) Well, now, at the time you signed articles on the SS "Nevada" on or about January 10, 1938, you got the employment through the Seamens Church Institute, is that correct? A. That is correct.

Q. Did they at that time ask you whether you were a member of the N. M. U.? [269]

A. No.

(Testimony of J. Gordon Rosen.)

Q. Did the Seamens Church Institute ask you that? A. No.

Q. Did any of the officials of The Texas Company ask you that? A. No.

Q. Did the captain or any of the officers of the ships ask you that question? A. No.

Q. Now, when you signed shipping articles on the SS "Washington" on or about June 1, 1938, you obtained the employment through the Seamens Church Institute, did you not? A. Yes.

Q. Did the Seamens Church Institute ask you whether you were a member of the N. M. U.?

A. No.

Q. Did they say that because you were a member of the N. M. U. you would not be hired?

A. You know, after all there is a Wagner Act.

Q. Well, "yes" or "no."

Trial Examiner Myers: Answer the question.

Q. (By Mr. Van Dusen) Did any of the officials of The Texas Company ask you whether you were a member of the N. M. U.? A. No.

Q. Did the captain or any of the officers of the ship ask you whether you were a member of the N. M. U.? [270]

A. Not at the time I came aboard the ship.

Q. Or at the time you signed shipping articles?

A. No.

Q. Now, during the interval that you left the SS "Nevada" for the second time on or about April 18 until the time you were on the SS "Washing-

(Testimony of J. Gordon Rosen.)

ton" you say that you made every possible effort to obtain employment?

A. What were those dates again?

Q. At the time you left the SS "Nevada", which is April 18, 1938, to the time that you signed shipping articles on the SS "Washington" on June 1, 1938?

A. Yes, I made every effort to obtain employment at that time.

Q. How do you obtain employment on the N. M. U. list? Do they have a list?

A. They do.

Q. How is that list prepared? How do they rank the men?

A. It is on a rotary system. The No. 1 man is the one that has been there the longest; attends the meetings.

Trial Examiner Myers: When you say "has been there the longest" what do you mean? I tried to get that before. You mean unemployed the longest?

A. That is right.

Trial Examiner Myers: And who has been registered the longest at the Seamen's Institute or at the N. M. U.? [271]

A. Yes.

Q. (By Mr. Van Dusen) Well, hadn't you been a member of the N. M. U. for a long time?

A. Yes, I have.

Q. Wouldn't you have been given preference under those circumstances?

A. No, sir.

Q. Why not?

(Testimony of J. Gordon Rosen.)

A. Because we ship on the democratic system. It don't matter how long a man has been in the union. As soon as he registers he is placed on the shipping list and when his time comes he is given an equal chance of employment with other members.

Q. Well, why was it you were not able to obtain employment in that approximately six or eight weeks?

Mr. Davis: I think that calls for possibly a conclusion.

Trial Examiner Myers: I overrule the objection.

A. Because shipping was slow. There was plenty of A. B.'s on the beach. Five Gulf Company ships had been laid up at that period of time.

Q. (By Mr. Van Dusen) Did you try to obtain employment through individual companies? Did you make application with individual companies? A. Only The Texas Company.

Q. No other company? [272]

A. No other companies.

Q. Just to the Seamen's Church Institute and the N. M. U. list? A. Yes.

Q. That is the only effort you made to obtain other employment during that period of time?

A. During that period of time.

Q. The reason why you didn't apply to other companies was that you really wanted to get on The Texas Company's ships, isn't that the real reason?

(Testimony of J. Gordon Rosen.)

A. Yes, that was the real reason. I wanted to try to get back on a Texas Company ship.

Q. Now, Mr. Rosen, the charges against The Texas Company which you filed with the Labor Board were filed some time in April of this year shortly after you left the SS "Washington", isn't that correct?

A. I filed them through the attorney for the union. I don't know what date it was filed.

Q. You filed them with the attorney for the union shortly after you left the SS "Washington"?

A. Yes.

Q. At that time your charges were to the effect that you were unlawfully discharged from the SS "Nevada", isn't that correct?

A. Did you say "charges" or "charge"? [273]

Q. The charges you filed had to do with the SS "Nevada", the charges which you filed with the attorney for the union in April shortly after you left the SS "Nevada"?

A. No, they had to do with the "California" also.

Q. Now, isn't it a fact that after these charges had been filed you signed shipping articles on the SS "Washington" of The Texas Company?

A. That is right.

Q. Isn't that correct?

A. That is right.

Q. Then when you left the SS "Washington" you filed additional charges with the attorney for the union, is that correct?

A. I did.

(Testimony of J. Gordon Rosen.)

Q. Now when did you file those charges, the amended charges, with your attorney?

A. The agent and delegate of the union took care of that matter.

Q. I mean approximately what date?

A. Immediately after I was discharged off the "Washington."

Q. Now isn't it a fact that at the time you filed these amended charges you had only mentioned your leaving the SS "Nevada" and the SS "Washington"? You had only mentioned——

A. (Interrupting) No, sir.

Mr. Van Dusen: I want to ask Mr. Davis now, Mr. Examiner, [274] if he will concede that the alleged discharge from the SS "California" was mentioned for the first time in the complaint which was served on The Texas Company and was not mentioned in the notices which the Regional Director sent to The Texas Company prior to the issuance of the complaint.

Trial Examiner Myers: Well, all the testimony so far, Mr. Van Dusen, was that this witness filed charges with his attorney; that is, the attorney for the union. There is nothing in the record showing what either he or the union filed with the Board.

Mr. Van Dusen: I realize that, but in order to save time I thought that perhaps I could get Mr. Davis to stipulate on certain letters sent by the Regional Director as their preliminary to the filing of formal charges.

(Testimony of J. Gordon Rosen.)

Mr. Combs: Mr. Examiner, I don't see what materiality or relevancy this has; whether it be true or untrue, the fact is that it has been testified that it was handled through his attorney, and whether or not what Mr. Van Dusen says is true has no probative value whatsoever.

Mr. Van Dusen: The Board, as I understand it, is acting for the seamen. Under the act it has the power to investigate the charges and if it finds that there is cause for the issuance of a complaint, it issues the complaint. The Board's attorney represents the seamen who are discharged. Now I think it is pertinent on this question to have the correspond- [275] ence leading up to the filing of the complaint and all I am asking Mr. Davis to do is to permit me to put into the record the letters from the Regional Director. I will let them speak for themselves.

Mr. Wright: I don't know what the facts are. If the facts are what Mr. Van Dusen says they are, that is all right with us. I think the record ought to reflect, however, that this man had nothing to do with the filing of the charges as such; that his union agent filed the charges; that his union attorney handled them for him; and that he is therefore not in a position to know the facts. Any interrogation of him with reference to the facts I submit is out of reason, because he has no foundation of fact to base any testimony on.

Trial Examiner Myers: Well, let's wait until

(Testimony of J. Gordon Rosen.)

we hear from Mr. Davis to see what he has to say about it. I think we had better have this discussion off the record from now on.

(Discussion off the record.)

Trial Examiner Myers. Are you ready to proceed, gentlemen?

Mr. Davis: Let the record show that while I cannot see the materiality of the request, I have been requested by counsel for respondent to state for the record when the fact that Gordon Rosen was discharged from the ship SS "California" [276] on September 19 or about that date, 1937, was first brought to the attention of the Sixteenth Region of the National Labor Relations Board. The file reveals that Mr. Rosen first brought that fact to the attention of Field Examiner J. F. Lebus on May 24, 1938, and that the first charge received by the Sixteenth Region of the National Labor Relations Board setting out that date was received and was stamped on August 6, 1938.

Let the record further show that the first charge involving the discharge of Gordon Rosen was received in the office of the Sixteenth Region of the National Labor Relations Board on April 23, 1938.

Mr. Combs: Mr. Examiner, we are not objecting to that because we don't consider it a matter of sufficient importance to take up time in argument, but unless our silence would be taken as acceptance that it is admissible, I want to say that we don't think it is material. [277]

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Well, now, I will have, Mr. Examiner, to take exception to that statement and to reply to it.

Trial Examiner Myers: Well, you have all the information that you want.

Mr. Van Dusen: Well, he said he didn't think it was worth taking up time on.

Trial Examiner Myers: He said he didn't want to take the time to make objection to it.

Mr. Van Dusen: He said he didn't think it was worth the time. I want to say that it is important from our standpoint. This charge is dated September, 1937, and the Board learns about it for the first time in 1938. I think it is worthwhile and I think it is important to my client to show that.

Mr. Combs: Mr. Examiner, I think it shows great forbearance.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, when did you first say you brought these charges to the attention of the attorney for the N. M. U.?

A. I mentioned the fact that I was fired off the "California" and brought this to his attention immediately following my discharge from the SS "Nevada". I mentioned it in regard to my service with The Texas Company; in that respect.

Q. And that was approximately what date?

Trial Examiner Myers: Well, look at your discharge papers? [278]

A. It was about four or five days later.

Mr. Wright: We would like to object to this.

(Testimony of J. Gordon Rosen.)

However, we have no serious objection except that it is immaterial to the case, no matter when he brought the matter to the attention of his attorneys.

Mr. Van Dusen: I think it is important on the question of laches.

Trial Examiner Myers: We have all the information and I will overrule the objection, but I don't think we should go into it further. Do you want to go into it further, Mr. Van Dusen?

Mr. Van Dusen: I do want to ask one or two questions on that point, Mr. Examiner.

Trial Examiner Myers: All right, go ahead.

Q. (By Mr. Van Dusen) You were a member of the N. M. U. since May of 1937?

A. Officially a member.

Q. Why is it you didn't bring the discharge from the SS "California" to the attention of your attorney prior to the date you mentioned?

A. I wasn't aware of my rights under the Wagner Act at that time.

Q. When did you first learn of your rights under the Wagner Act?

A. Oh, approximately six months later. [279]

Q. Didn't you testify that while on the SS "Nevada" on the trip beginning January 10, 1938, that you engaged in union activities aboard that ship?

A. On this trip?

Q. You were on the SS "Nevada" from January 10, 1938, to April 18, 1938, were you not?

(Testimony of J. Gordon Rosen.)

A. Yes.

Q. And you have testified today that you were engaged in union activities on board that ship?

A. I was.

Q. Isn't that correct? A. Yes, sir.

Q. Then you were aware of your rights under the Wagner Act?

Mr. Davis: This is argumentative. That is argumentative and does not necessarily follow.

Mr. Wright: Mr. Examiner, I would like to point out for the gentlemen's benefit that I don't believe the record will reflect that on the first trip this man made on the "Nevada" that he made any statements with respect to his labor activities or his union activities. His statements were with respect to a special job he had done on that ship.

Mr. Van Dusen: I think he spent several hours talking about that. May I have a ruling on my question, Mr. Examiner?

Trial Examiner Myers: I will overrule the objection. Do you understand the question, Mr. Witness? Would you like [280] to have it read to you?

A. Yes, I would like to have it read to me. ...

Trial Examiner Myers: Read the question to him, Mr. Reporter.

(The last question was read.)

A. At what particular time?

Q. (By Mr. Van Dusen) While you were on the SS "Nevada"?

A. I was aware of my rights while I was on the SS "Nevada".

(Testimony of J. Gordon Rosen.)

Q. Yet you hadn't filed your charges at that time?

Mr. Wright: I object, Mr. Examiner, for the reason that all this stuff is argumentative. The last three questions are especially argumentative.

Trial Examiner Myers: He is testing the veracity of the witness. I will overrule the objection.

Mr. Van Dusen: Will you read the question, please, Mr. Reporter?

(The last question was read.)

A. No, I didn't file them until I was discharged from the SS "Nevada".

Q. Now, in your testimony given during the day you testified and you said that from time to time you talked to the captains of those various ships and with the officers and also with Mr. Hand regarding complaints that you and other seamen had, is that correct? A. I did. [281]

Q. Now, on some occasions the captain and Mr. Hand complied with your requests, isn't that the case?

A. I think very few times did they comply.

Q. Well, they did at times comply with your requests? At Bilboa, Spain, for instance after you talked to the captain he granted shore leave, did he not; that is, Captain Swanson?

A. About an hour later.

Q. Well, I mean he did? A. Yes.

Q. Although at first he was denying shore leave?

(Testimony of J. Gordon Rosen.)

A. He said he wouldn't give us shore leave until the military authorities told him we could have it.

Q. At other times the captain and the officers of the ship refused to grant your requests, isn't that correct? A. That is right.

Q. But during this period you were able to see and talk to the officers of the ship, were you not?

A. No, sir.

Q. What is that? A. No, sir.

Q. On the various occasions that you mentioned this morning they talked to you, didn't they?

A. They told me they wouldn't recognize me as a delegate——

Q. (Interrupting) Please answer the question. I said did they talk to you? I said did they talk to you on the occasions [282] that you mentioned?

A. On the first part, yes.

Q. I mean the occasions that you mentioned during all your testimony. The captain and the officers talked to you, didn't they? A. Oh, yes.

Q. They didn't throw you out, did they?

A. Practically.

Trial Examiner Myers: What you mean is that they would talk to you as an individual and not as a delegate? Is that what you mean?

A. That is right.

Q. (By Mr. Van Dusen) They talked to you on occasions when you said you were representing the crew?

(Testimony of J. Gordon Rosen.)

A. On certain occasions they would and on certain occasions they would not.

Q. I say on the occasions to which you testified?

A. Yes.

Q. On certain occasions the conversations lasted for fifteen or twenty minutes, did they not?

A. Sometimes they did.

Q. Because you talked that long in telling about it in your testimony. So that they were willing to listen to your grievances?

A. On certain occasions they were and other occasions they [283] weren't.

Q. You didn't mention any occasions when they weren't on your direct examination? A. I did.

Q. Well, when?

A. Captain Bergman absolutely refused to recognize me as the delegate, elected representative of the crew, and Captain Hand the same thing.

Q. On what occasion?

A. Captain Bergman, I will have to refer to my notes for that.

Mr. Wright: Mr. Examiner, I would like to point out that the record itself speaks for itself.

Mr. Van Dusen: Well, I have the right to cross examine the witness. You are not going to deny me that right, are you?

Trial Examiner Myers: Well, gentlemen, don't get into any discussion.

Mr. Van Dusen: He has been on the stand for six hours and he has done lots of testifying.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Now, Mr. Wright, have you an objection?

Mr. Wright: Yes, sir. I am doing my very best to make it. He asked the gentleman what he testified to. I say the record itself speaks for what he testified to.

Trial Examiner Myers: This is cross examination, Mr. [284] Wright. I will have to overrule your objection.

A. On one particular occasion, on Thursday, June 9, we had a meeting and certain things were voted upon. Immediately after the meeting Zinkiewicz and myself went up to Captain Bergman and had the following conversation with him:

I said, "Captain, the union men of this ship have just had a meeting and Zinkiewicz was elected deck delegate and I was elected ship's delegate. We would like some information on several things."

Captain Bergman: "Well, I don't know nothing about any delegates. We don't recognize any unions on this ship. If you have anything to say as an individual or collectively, you can tell me about it."

Zinkiewicz then made his individual complaint and I made my individual complaint. He refused to recognize us as delegates on that occasion.

Q. (By Mr. Van Dusen) He listened to your individual complaints though, didn't he?

A. He did.

Q. Did the other officers listen to your individual complaints; for instance, Captain Swanson?

(Testimony of J. Gordon Rosen.)

A. Yes, I believe Captain Swanson did.

Q. And Captain Peterson on the "California"?

A. Yes.

Q. Did they ever refuse to talk to you in regard to indi- [285] vidual complaints?

A. I can't remember of any occasion, no, I can't remember any particular occasion.

Q. Well, take Captain Peterson, do you remember any occasion when he refused to listen to your individual complaints? A. Sir?

Q. Captain Peterson, did he ever refuse to listen to individual complaints on your part?

A. No, he didn't refuse that I know of.

Q. How about Captain Swanson?

A. Yes, Captain Swanson refused.

Q. On what occasion?

A. When I went up about the Cat Island overtime.

Q. Well, he talked to you about the overtime, didn't he? He told you he wouldn't allow it?

A. Yes, he told me he wouldn't allow it.

Q. But he did talk to you about it?

A. But he said, "Everybody that wants overtime come up there collectively."

Q. He talked to you? A. Collectively.

Q. He may have disagreed with you, but he talked to you? A. Collectively, yes.

Q. Any other occasion when Captain Swanson refused to listen to individual complaints? [286]

(Testimony of J. Gordon Rosen.)

A. Not any particular occasion that I know of.

Q. How about Captain Bergman?

A. Yes, Captain Bergman refused.

Q. On what occasion?

A. When Zinkiewycz went up to Captain Bergman and he asked him why——

Q. (Interrupting) No. I am talking about you now.

A. As an individual I don't believe I ever talked to Captain Bergman as an individual, except on this one occasion when I couldn't get any response as a delegate.

Q. Well, did you ever try to talk to him?

A. While I was a delegate I tried all the time and he recognized the fact.

Q. Well, if there was a complaint for the group then you had the same complaint too?

A. I was the spokesman for the group.

Q. I mean you had the same complaint, isn't that correct? A. No, no.

Q. Well, you didn't agree with the complaint, but you were making it for them?

A. It didn't necessarily mean that I was agreeing with the complaint, because some of the complaints were on behalf of other men, like the steward's department, the engine department, and the quartermasters.

Q. All right. Did he ever refuse to talk to you on any [287] individual complaints you had?

(Testimony of J. Gordon Rosen.)

A. Well, that would be a hard question, because I never went to him with an individual complaint.

Trial Examiner Myers: Did you go to him once about the toilets?

A. No, sir, that was not an individual complaint.

Trial Examiner Myers. You, yourself complained about it, didn't you?

A. No, sir. Zinkiewycz did. [288]

Trial Examiner Myers: Didn't you complain about the toilets being dirty and that the bedding was not changed often enough?

A. I tried to complain to him but he wouldn't listen to me as a representative.

Trial Examiner Myers: But as an individual did you make a complaint? He said, "Now as a delegate, I won't listen to you, but," he said, "if you have any complaint to make as an individual I will listen to you"? A. That is right.

Trial Examiner Myers: And that is the time you told him about the toilets?

A. I didn't tell him about the toilet. Zinkiewycz did. It is in the testimony.

Q. (By Mr. Van Dusen) You were there?

A. Yes, I was there.

Q. Is there any other occasion when he refused to listen to an individual complaint?

A. The only time is when Zinkiewycz went up to him that I know of.

Trial Examiner Myers: When Zinkiewycz was

(Testimony of J. Gordon Rosen.)

with you. Did Zinkiewicz ever go there alone without you?

A. Yes, he went there alone when he was fired.

Q. (By Mr. Van Dusen) Then you know of no other occasion when you had an individual complaint that Captain Bergman [289] refused to discuss it with you?

A. I don't remember any offhand, no.

Q. Now you say you were acting as ship's delegate?

A. That is right, on the SS "Washington".

Q. What is that?

A. On the SS "Washington", that is right.

Q. Not on the SS "Nevada"?

A. No, sir, not on the SS "Nevada".

Q. Now who selected you as delegate?

A. The crew at a regular meeting voted me in as a ship's delegate.

Q. Did the local Port Arthur branch of the N. M. U. authorize you to act as delegate?

Mr. Wright: I want to object to that for several reasons, one of which is that it is irrelevant and immaterial. The other reason is that the constitution of the organization speaks for itself and is now in evidence.

Mr. Van Dusen: Mr. Examiner, I think this is very important, because a great deal of stress in this testimony was placed on Mr. Rosen acting for a group and trying to talk with the captain and he said that the captain on numerous occasions said

(Testimony of J. Gordon Rosen.)

he did not recognize the union. Now we are getting toward the heart of the case and I think he ought to be obliged to answer that question.

Trial Examiner Myers: Have you anything to say, Mr. [290] Martin?

Mr. Martin: Mr. Examiner, we object on the ground that the only relevant evidence as to Mr. Rosen's authority to represent the group would be evidence concerning whether or not the officer of the ship with whom he discussed the matter asked him whether or not he had any authority. We consider all other questions as to his authority quite beside the point of the case, which is whether Mr. Rosen was discharged for his union activities, and has nothing to do with whether he had authority to do what he did if the officer did not question that authority.

Trial Examiner Myers: I will overrule the objection.

Can you answer the question, Mr. Witness? Can you remember the question? A. No.

Trial Examiner Myers: Mr. Reporter, please read the question to the witness.

(The last question was read.)

A. That is one of the duties of each bona fide member of the N. M. U.—

Q. (By Mr. Van Dusen) "Yes" or "no", Mr. Rosen.

Trial Examiner Myers: Do you understand the question? Were you selected by the Port Arthur

(Testimony of J. Gordon Rosen.)

Branch of the N. M. U. to represent it?

A. The Port Arthur group has nothing to do with my selection [291] as representative aboard that ship.

Trial Examiner Myers: That is all Mr. Van Dusen wants to know.

Mr. Van Dusen: That is all I want to know.

Q. (By Mr. Van Dusen) Do you know of your own knowledge when the election on The Texas Company ships took place?

A. Approximately.

Q. What was that date?

A. They started around the end of October and continued through——

Q. (Interrupting) What year?

A. 1937.

Q. No. I mean when did the election take place? When was the N. M. U., if you know, selected by the seamen as the exclusive bargaining agency?

A. It was announced in the official organ of the union in March of 1938.

Q. 1938? A. Yes, sir.

Q. That was prior to the time you were on the SS "Washington"?

A. Before I was on the "Washington".

Q. Is that right? A. Yes, sir.

Q. So that the N. M. U. was the exclusive bargaining agency [292] for the unlicensed seamen at the time you were on the SS "Washington", is that correct?

(Testimony of J. Gordon Rosen.)

A. They were the bargaining agency between the officials and the union.

Q. I say they were the exclusive bargaining agency for the unlicensed personnel?

A. They were certified, yes.

Q. And they represented the unlicensed personnel on all of The Texas Company fleet, isn't that correct?

A. No, I don't think so.

Q. Well, what did the N. M. U. represent? Just one ship?

A. No.

Q. How many ships?

A. That is the point. It is the duty of every member——

Q. (Interrupting) No, no. How many ships did the N. M. U. represent of The Texas Company fleet unlicensed personnel?

A. I don't quite get your point. The N. M. U. is the membership.

Q. The N. M. U. was not the exclusive bargaining agency for the unlicensed personnel?

A. It was certified, yes.

Q. Then they do represent the unlicensed personnel?

A. The membership of the N. M. U.——

Q. (Interrupting) The National Maritime Union represents the unlicensed seamen on The Texas Company ships, is that [293] correct?

A. In bargaining with the company officials.

Q. And that covers all of The Texas Company ships?

A. Yes, it does, I believe.

(Testimony of J. Gordon Rosen.)

Q. Now do you know approximately how many ships The Texas Company has?

A. About 28 deep sea vessels.

Q. Now when you were on the SS "Washington" no official of the N. M. U. had designated you to bargain with the captain or anybody else connected with The Texas Company, had they?

A. That is not the system under which we work.

Q. "Yes" or "no".

Mr. Wright: Mr. Examiner, I would like to have my objection to the immateriality of it.

Mr. Van Dusen: Oh——

Trial Examiner Myers: Well, go ahead. You say "oh". [294]

Mr. Van Dusen: This man talks about bargaining with the captain and the captain saying, "I am not recognizing any union." Now, maybe he doesn't have to recognize this gentleman.

Mr. Martin: Mr. Examiner, the issue is not whether he has to recognize anybody, but whether, if he doesn't want to recognize him as the delegate, he has a right to fire him.

Mr. Van Dusen: Then, under those circumstances, why did you put in that evidence?

Mr. Martin: You asked for it.

Mr. Van Dusen: I didn't ask for this evidence with reference to his talks with the various captains.

Mr. Wright: All I am objecting to is the immateriality of this business of authority.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I think it is very material.

Trial Examiner Myers: I think you are asking this witness to construe certain decisions of the Board.

Mr. Van Dusen: What is that?

Trial Examiner Myers: I say I think you are asking this witness to construe certain decisions of the Board.

Mr. Van Dusen: No, I am trying to find out what authority he has to speak as representative of the N. M. U., which was chosen as the exclusive bargaining agency. He says he was elected by the members of the crew of that particular ship. [295]

Mr. Martin: The issue is whether the man was discharged.

Mr. Van Dusen: I beg your pardon. You have other allegations in your complaint.

Trial Examiner Myers: Well, let Mr. Martin go ahead with his statement.

Mr. Martin: Now, as I understand it, any comments of the captain or of the mate with whom he talked as to his authority or lack of authority would be pertinent as indicating whether they did consider him as speaking for the group. If they did ask him whether he was representing the group and he replied that he was and then he was discharged, I would urge that as an indication that at least it was one of the reasons why he was discharged; that is for his union activities. If the captain or the mate did not ask him for his author-

(Testimony of J. Gordon Rosen.)

ity, I can't see why we should go into it here, because regardless of whether the man had the authority or not, certainly the penalty should not have been firing him. The penalty might have been to refuse to talk with him, but it certainly did not justify discharging the man.

Mr. Van Dusen: Now, Mr. Examiner, I would like to ask Mr. Davis if he is confining this charge solely to the discharges and is therefore withdrawing the allegation respecting passes and the general allegations in paragraph nine which state, “* * * and by other acts and conduct the [296] respondent has interfered with, restrained and coerced its employees in the exercise of their rights to self organization to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.” There are some general allegations. I am not sure that that is not going to be used to prove those allegations. That is an additional reason for offering the evidence.

Mr. Davis: By all means counsel for the Board is not withdrawing the allegations that Mr. Van Dusen quotes. We still feel, however, that the line of testimony that he has been delving into is irrelevant and immaterial. It appears to me that this is the first time, so far as I can determine, that the company has questioned authority of a union to select delegates on a ship. So far as I know, it is

(Testimony of J. Gordon Rosen.)

the first time that the constitution and by-laws of the Union have been in the possession of the company so that they could delve into them and come to the conclusion that the men didn't have the right to select delegates. So I am just wondering how they can go back now six months or a year and say that "We didn't believe then that these men had the right to select delegates." If they have evidence that they want to offer in the record to show that they believed then or that their masters believed then that these men didn't have authority to [297] represent the men, that is well and good and certainly I wouldn't register any objection.

Mr. Van Dusen: Are you finished, Mr. Davis?

Mr. Davis: Yes.

Mr. Van Dusen: As I understand it, Mr. Examiner, the Labor Act provides for collective bargaining and the selection of one agency to represent an entire group. Now, Mr. Rosen is not claiming in any of his testimony to represent all the seamen on all the ships of The Texas Company, but merely on the SS "Washington". Now, the Act gives an individual the right to talk to his employer, but if he is dealing collectively where an agency has been designated, that agency must speak, and I want to find out if he was designated by the agency.

Trial Examiner Myers: Well, as I understand it from your argument, Mr. Van Dusen, it is that the captain of these boats would have listened to Mr. Rosen's complaint as a delegate if the captain was

(Testimony of J. Gordon Rosen.)

satisfied that Mr. Rosen represented the Union. Is that right?

Mr. Van Dusen: That is right.

Trial Examiner Myers: As I understand the testimony, it is that irrespective of whether he was the local delegate, the captains would not speak to him.

Mr. Van Dusen: No, not if Mr. Rosen has the authority that Mr. Lawrenson had in New York. We dealt with Mr. Lawrenson. If Mr. Rosen has the authority to represent the [298] seamen and to speak for all the seamen as a bargaining agency we will deal with him.

Trial Examiner Myers: Well, the constitution is in the record and will speak for itself.

Mr. Van Dusen: Well, I think it is important and I would like for you, Mr. Examiner, to rule on this.

Trial Examiner Myers: Well, I will sustain the objection.

Mr. Van Dusen: You mean that I can go no further on this?

Trial Examiner Myers: Yes.

Mr. Van Dusen: I except.

Mr. Examiner, I feel that as this is an important witness and as I may have a few more questions to ask, I would like to continue with the witness tomorrow morning if you will permit.

Trial Examiner Myers: Well, it is five thirty now. Shall we adjourn until tomorrow morning?

(Testimony of J. Gordon Rosen.)

Is that agreeable with everybody?

We will adjourn until nine o'clock tomorrow morning, gentlemen.

(Thereupon, at 5:30 o'clock p. m., September 13, 1938, the hearing was adjourned to 9:00 o'clock a. m., September 14, 1938. [299])

Proceedings

Trial Examiner Myers: Are you ready to proceed?

Mr. Van Dusen: Yes, Mr. Examiner.

Trial Examiner Myers: Mr. Rosen, will you come around.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Mr. Van Dusen: Mr. Examiner, before I resume questioning this witness, it is my understanding that toward the close of the hearing yesterday you sustained an objection made by counsel for the Labor Board and counsel for the union to any questioning on my part, or testimony to be given by this witness, respecting talks and efforts to talk with the captain and officers of the various vessels for the purpose of showing authority of this witness to speak for a group of the unlicensed personnel. Is that correct?

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: That is not correct. I sustained the objection based on the theory that you were trying to prove that this man did not have authority to speak for the union as a whole; that is, that he was not delegated by the national office to represent the union as a whole.

Mr. Van Dusen: I am trying to distinguish between individual complaints and complaints and discussions made by this witness as a representative for a group or all of the unlicensed seamen. [301]

Trial Examiner Myers: On a particular boat?

Mr. Van Dusen: No, whether it is on a particular boat or for all the unlicensed seamen.

Trial Examiner Myers: As I understand, the testimony is that he was appointed delegate to speak for the men on the boat on which he was employed at the time he went to see the captain.

Mr. Van Dusen: Yes. Now my point is that if he speaks for some one other than himself, for a group of seamen, whether on a particular boat or for the entire fleet, I want to question him on the authority he has from the National Maritime Union, which is the exclusive bargaining agency for the unlicensed seamen for The Texaco fleet. Do I understand you do not permit us to do that?

Trial Examiner Myers: Well, it is conceded he did not have any authority from the National to speak for the entire personnel.

Mr. Van Dusen: Let me ask, do you concede, for the purpose of the record, that Mr. Rosen has

(Testimony of J. Gordon Rosen.)

no authority to speak as agent for the N. M. U. for the unlicensed personnel aboard all The Texas Company ships?

Mr. Wright: Mr. Van Dusen, it is my position, in the first place, is that whether he did or did not is immaterial. However, for your benefit, I state one more time that this man had no authority to bind the National Maritime Union in [302] a contract of any kind; that he had no authority to bind any branch of the National Maritime Union by a contract; and that he had a right to bargain on grievances with the personnel, the official personnel, of any ship, Texas Company or otherwise; and that he had a right to bargain in behalf of the crew on any matter that came to the attention of the crew, so long as the bargaining did not bind the National Maritime Union as such; that whatever he could get by way of bargaining for the members of the crew, the National Maritime Union has no complaint to make, and would urge no complaint, and that he has that much authority.

Mr. Van Dusen: I understand then that he has no authority to bind the National Maritime Union.

Mr. Wright: That is right. He can bargain in behalf of the crew, if the crew wants to be bound.

Trial Examiner Myers: Of a particular ship.

Mr. Wright: Yes, sir.

Mr. Van Dusen: Then he is not speaking as an agent of the National Maritime Union, which was appointed or certified as exclusive bargaining

(Testimony of J. Gordon Rosen.)

agency. He is merely speaking for the group.

Mr. Wright: The crew on the vessel on which he happened to be the delegate. Anything he could get, whatever they got by such bargaining, the National Maritime Union would have no objection whatsoever, so long as what he did did not bind the [303] union as such. If it bound the crew, that is up to the crew. The union has no concern in a particular crew on a ship not under contract. They could get whatever they can get.

Mr. Van Dusen: And he has no authority to bind the union?

Mr. Wright: That is right, or any branch.

Trial Examiner Myers: Is that clear?

Mr. Van Dusen: That is clear. I then move to strike out all the testimony respecting talks and efforts to talk with the captain and officers of the vessels where he was speaking for a group of the unlicensed personnel, on the ground that it is immaterial and irrelevant to this case, since this involves a charge of discrimination under the Labor Act, and refusal to bargain under the Labor Act, and other possible violations under the Labor Act.

Trial Examiner Myers: Do you want to be heard, Mr. Martin?

Mr. Martin: Yes. An action for refusal to bargain under the National Labor Relations Act can be based solely on what is known as an VIII-5 charge, referring to Section VIII-5 of the statute. There is no such charge in this case.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Do you want to be heard on that motion, Mr. Wright?

Mr. Wright: I think the motion is so patently out of order that it requires no comment at all. These men had a right to bargain in their own behalf as members of the National [304] Maritime Union for anything they could get out of the captain of that vessel. They did not undertake in any part of the negotiations they had with the captain on any vessel to bind the National Maritime Union as such. They had perfect authority to do everything that they did, under the testimony that is already in.

Mr. Van Dusen: I understand that, but I still insist it is immaterial and irrelevant to this case.

Mr. Wright: On the contrary, the very theory of this case is that these men were engaged in union activity, and because they were engaged in union activity The Texas Company fired them. We have got to show some union activity in order to justify this case. [305]

Mr. Van Dusen: I would like a ruling on my motion.

Trial Examiner Myers: I understand the testimony was elicited for the purpose of showing that these men were engaged in union activity, is that right?

Mr. Martin: That is correct.

Trial Examiner Myers: And that was the basis

(Testimony of J. Gordon Rosen.)

of the charge, discharge of these men for union activity.

Mr. Martin: That is correct.

Trial Examiner Myers: I understand also that the testimony was elicited under your complaint as to the charges of violations of Section 8, Subdivision 1, of the Act.

Mr. Martin: That is right, Mr. Examiner.

Trial Examiner Myers: And is offered for no other purpose.

Mr. Martin: That is correct.

Trial Examiner Myers: I will deny the motion.

Mr. Van Dusen: Exception.

Trial Examiner Myers: That is, I deny the motion to strike out.

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: Are you clear about the ruling as to the authority of this man to bind the union as a whole?

Mr. Van Dusen: Yes, I think Mr. Wright has cleared that up by his concessions.

Mr. Wright: It is no concession on my part.
[306]

Trial Examiner Myers: It is a concession, and was so conceded on Monday, that any man who engaged in any bargaining on a particular ship, that that person was not authorized by the national office in New York to bind the union as a whole. That was the stipulation entered into on Monday. Is that your idea of it?

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Yes, but I merely want the record to be clear. If Mr. Wright is qualifying his concession that this man has not authority to bind the union, then I must question him on it.

Mr. Wright: I don't mean a concession in that respect.

Mr. Van Dusen: Then you will stipulate.

Mr. Wright: Yes, I will stipulate. That is exactly what I said. I thank you.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, you testified yesterday that each time you made a particular coastwise or foreign trip you signed shipping articles? A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. Now, the shipping articles for foreign trips are signed before a U. S. Commissioner, is that correct?

A. Yes, sir, I believe they are.

Q. Now, when these trips ended you were paid off, and at that time either signed new articles for another trip or got a [307] discharge certificate from the captain? A. Yes, sir.

Q. Isn't that a fact? A. Yes, sir.

Q. When this took place the old articles were terminated? What I mean is when you were either paid off or given a certificate of discharge and signed the new articles the old articles were terminated, that is correct, is it not? A. Well—

Q. For the same ship, I am talking about.

A. Sometimes they sign a man, sign him on new

(Testimony of J. Gordon Rosen.)

articles, and then fire him while he is still——

Q. No, I mean in your case, if you sign shipping articles, and you reach the port, and you are paid at that port——

A. Yes, sir.

Q. And you decided to stay on the ship you would sign new articles?

A. Yes, sir.

Q. And then the old articles were terminated at that time?

A. Yes, sir.

Q. You said that these articles which are Respondent's Exhibits 1, 2, 3 and 4 for identification were signed by you, and covered your trips on the "California". That was from June 30, 1937 to September 18, was it, 1937?

A. Yes, sir. [308]

Q. I will show you articles dated Port Arthur June 1, 1938, and ask you if you signed those articles?

A. Yes, sir, that is right.

Q. That covers your trip on the SS "Washington" from June 1, 1938 to July 14, 1938, when you said you were discharged by the officers of that ship, is that correct?

A. No, it is not. I signed another set of articles. This was just for this particular trip.

Q. Have you got your discharge for that?

A. I believe I have. (Witness handed discharge to counsel.)

Q. That refers to June 1, 1938 to July 14, 1938?

A. Yes, sir.

Q. Doesn't that tie into that?

A. Yes, continued service. I think that is only one trip.

(Testimony of J. Gordon Rosen.)

Q. What time did you make the other trip? Do you recall where you went on that trip?

A. The next trip we went to Claymont, Delaware.

Trial Examiner Myers: From Port Arthur?

A. From Port Arthur.

Q. (By Mr. Van Dusen) Were you paid off more than once on the SS "Washington"?

A. I believe we were, yes, sir. I have that down here somewhere. This was on or about June 23, 1938, we signed articles for the second trip, to the best of my knowledge.

Q. Similar articles to these? [309] A. Yes.

Mr. Van Dusen: Mark this for identification please.

(The document was marked "Respondent's Exhibit No. 5" for identification.)

Mr. Van Dusen: I now offer in evidence Respondent's Exhibits 1 to 5, inclusive for identification.

Trial Examiner Myers: Any objection to these exhibits marked for identification going in evidence?

Mr. Martin: No objection, Mr. Examiner.

Mr. Pipkin: They being ship's original papers, may we photostat them and substitute?

Trial Examiner Myers: You may.

Mr. Wright: No objection.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark Respondent's

(Testimony of J. Gordon Rosen.)

Exhibits 1 to 5, inclusive for identification in evidence as Respondent's Exhibits 1 to 5, inclusive.

(The documents heretofore marked "Respondent's Exhibits Nos. 1 to 5, inclusive", for identification, were received in evidence.)

Q. (By Mr. Van Dusen) Mr. Rosen, may I see your discharge for the "California"?

A. Yes, sir.

Mr. Van Dusen: I would like permission of you, Mr. Examiner, to substitute photostats for these originals, as we may need them with other seamen?

[310]

Trial Examiner Myers: Any objection?

Mr. Martin: No objection.

Trial Examiner Myers: There being no objection, I grant the permission to substitute photostats for Respondent's Exhibits 1 to 5. [311]

Mr. Van Dusen: Mr. Examiner, may that apply to all original ship papers.

Trial Examiner Myers: Well, we will take them up as we come to them.

Q. (By Mr. Van Dusen) This certificate of discharge is signed by you, is it not, Mr. Rosen?

A. Yes, sir.

Q. It is also signed by the captain of the vessel, P. Peterson?

A. Yes, sir.

Q. And this certificate was prepared by Captain Peterson when you left the ship, was it not? I mean that is the certificate he prepared when you left the ship?

(Testimony of J. Gordon Rosen.)

A. To that I couldn't testify, because the second mate handed me this discharge and gave me my money.

Q. Was the captain there?

A. No, the captain was not there at that time.

Q. Were you there when the captain signed it?

A. No, sir, I don't believe I was there when the captain signed it.

Q. Is that the captain's signature?

A. That is the captain's signature.

Q. Is that the captain's handwriting on the certificate of discharge?

A. I believe it is. [312]

Mr. Van Dusen: I offer this certificate of discharge in evidence.

Trial Examiner Myers: Any objection.

Mr. Van Dusen: I would like to have it photostated.

Trial Examiner Myers: You will pay for the photostating.

Mr. Van Dusen: Yes, sir.

Mr. Martin: Mr. Examiner, we have no objection to entering this as an exhibit, the certificate of discharge as an exhibit, so long as it is understood that photostat is to be taken and the original returned to Mr. Rosen at the most convenient time.

Trial Examiner Myers: Is that agreeable?

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: Hearing no objection, I ask the reporter to please mark the certificate in evidence as Respondent's Exhibit No. 6; and the

(Testimony of J. Gordon Rosen.)

respondent may substitute a photostat of the certificate in place of the original exhibit.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 6 for identification and was received in evidence.)

Q. (By Mr. Van Dusen) May I see your certificate of discharge for the SS "Nevada"?

A. Yes, sir. I received two certificates of discharge.

Q. I mean the time you contend you were discharged. That is the second trip.

A. That is the coastwise articles. [313]

Q. Now this certificate of discharge, Mr. Rosen, is signed by you? A. It is.

Q. It is also signed by Captain Swanson?

A. Yes, that is right.

Mr. Van Dusen: I offer this certificate of discharge.

Trial Examiner Myers: Any objection to it?

Mr. Martin: Mr. Examiner, no objection if entered under the same conditions.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark that certificate in evidence as Respondent's Exhibit No. 7. Respondent may substitute a photostat of the certificate in place of the original exhibit.

(Thereupon the certificate above referred to was marked as "Respondent's Exhibit No. 7 for identification, and received in evidence.)

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Van Dusen) May I now have your certificate of discharge from the SS "Washington"?

A. Yes, sir.

Q. This certificate of discharge bears your signature?

A. Yes, sir.

Q. It also bears the signature of the captain of the SS "Washington".

A. To that I could not testify definitely, because it was [314] given to me by chief mate, Johanson.

Q. Look at it. Is that the captain's signature?

A. It looks like it.

Mr. Van Dusen: I offer this certificate.

Mr. Martin: Mr. Examiner, no objection if entered under the same conditions.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark that certificate in evidence as Respondent's Exhibit No. 8. Respondent may substitute a photostat in place of the original certificate.

(Thereupon the certificate above referred to was marked as "Respondent's Exhibit No. 8 for identification and received in evidence.)

Mr. Van Dusen: Now, Mr. Rosen, the only foreign trip you made was that trip on the SS "Nevada" about January 10, 1938, when you went to Spain, is that right?

A. Yes.

Q. The trip you signed the so-called foreign shipping articles, is that right?

A. Yes, sir, that is right.

(Testimony of J. Gordon Rosen.)

Q. Now, Mr. Rosen, I believe on direct examination you testified that during the six years that you were an A.B. you were employed by approximately ten different companies, on the ships of ten different companies, is that correct?

A. No, sir, I don't believe that is correct. [315]

Q. Did you testify that during the time you were on the sea, which is approximately ten years, you worked for ten different companies, ten or more companies?

A. Approximately, yes.

Q. That means that over a period of ten years you worked for approximately ten different companies?

A. Well, there was some time in there, I am not certain about, positive.

Q. Well, for how many different companies have you worked during the time you were a seaman?

A. Well, about ten companies, offhand.

Q. Ten or more companies? A. Yes, sir.

Q. Now, isn't it the practice among seamen to shift from one vessel to another, and one company to another; isn't that a common practice?

A. It is among some seamen, most seamen, yes.

Q. You did that, didn't you?

A. Yes, I did.

Q. Many times you left a ship on your own accord, if you wanted to do something else?

A. Yes, sir, that is right.

Q. You said you left the Gulf ship because you didn't want to go north?

A. Yes, sir. [316]

(Testimony of J. Gordon Rosen.)

Q. In other words, you don't feel tied to a particular company? A. No, sir.

Q. Or to a particular ship? A. No, sir.

Q. Now, I show you the certificate of discharge which you got on the SS "California", and you just told me that you believed that certificate was written out in Captain Peterson's handwriting, is that correct?

A. Yes, I believe it is in his handwriting, but I am not sure.

Q. Now, on direct examination yesterday, didn't you say that Mate Baldwin prepared that certificate?

A. The second mate, yes, sir. He handed me the certificate.

Q. Didn't you say he prepared it?

A. No, sir, I don't believe that.

Q. I asked you if this question and answer were not asked you and given yesterday when Mr. Martin was examining you:

"Then what did you do after that conversation?

"Answer: Went down and started packing up. About one o'clock the second mate, Mr. Morgan, came down and said, 'I have been looking all over for you in order to give you your money.' While Mr. Baldwin was making out my discharge I said: 'What is the reason for me getting fired?' " Didn't you make that statement yourself?

A. Yes, sir. [317]

Q. Do you desire to change that?

(Testimony of J. Gordon Rosen.)

A. No, sir, I don't.

Q. Didn't you tell me this morning that was Captain Peterson's handwriting?

Mr. Wright: Mr. Examiner, I object.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) Didn't you tell me you believed that was in Captain Peterson's handwriting? A. That is right.

Q. Now if it was in Captain Peterson's handwriting Mr. Baldwin couldn't have prepared it, could he? A. He was preparing the voucher.

Q. No, just a minute. We are talking about the discharge. Here is what you said yesterday: "So I went up while Mr. Baldwin was making out my discharge."

A. Discharge papers, which includes voucher.

Q. Now you desire to qualify the statement you made yesterday.

Trial Examiner Myers: What are the facts? Tell us what the facts are.

A. Well, I went up there to get my money and discharge papers, and Mr. Baldwin was writing in the papers there.

Q. What papers?

A. The vouchers, as close as I could see it, discharge papers, whatever they were. [318]

Q. But not the certificate of discharge?

A. That I couldn't absolutely swear to, no, sir.

Trial Examiner Myers: Well, can the mate make out a discharge, a certificate of discharge?

(Testimony of J. Gordon Rosen.)

A. He can make it out, I believe, provided it is signed by the captain.

Q. (By Mr. Van Dusen) But you told me this morning you believed that discharge was in Captain Peterson's handwriting?

A. No, sir. The signature is in Captain Peterson's handwriting.

Q. I asked you this morning if the certificate was in Captain Peterson's handwriting, after I had asked you about the signature. You said you——

A. I thought you referred to the signature.

Q. Isn't that what you said?

A. I can't remember.

Q. You can't remember what you said this morning?

A. I remember I said it was in the captain's handwriting, yes, sir.

Q. Now is it or is it not in the captain's handwriting? A. The signature is.

Q. I am talking about what is on the rest of that certificate.

A. I would like to look at it again.

Q. Well, look at it. [319]

Trial Examiner Myers: Let him look at it. Please give the witness the exhibit.

A. Well, I am not a handwriting expert; I couldn't tell you. I just feel that the signature——

Q. (By Mr. Van Dusen) I know that, but you have seen the captain's handwriting. You can compare it with the signature on other papers.

(Testimony of J. Gordon Rosen.)

A. I won't swear to it, because I never saw him sign that.

Q. You always believed it was the captain's signature, didn't you? A. Yes, sir.

Q. You took it for that purpose, didn't you?

A. Yes, sir.

Q. You kept it in your possession because you believed it was the captain's signature?

A. Yes, sir.

Q. And you believe the rest of it was made out by the captain? A. That I don't know.

Q. That is what you told me this morning, didn't you?

A. I don't remember whether I did or not.

Q. Well, who made it out?

Mr. Wright: I would like to object to this line of questioning for the reason that I think the record is clear as to what he did testify, and further questioning along that [320] line is argumentative by counsel.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) Will you look at your notes. I think you read from your notes.

A. Not from Captain Peterson.

Q. You have nothing in your notes on that?

A. No, sir, not on the "Washington".

Q. You didn't see Baldwin prepare this certificate of discharge, did you?

A. I saw him writing some papers.

(Testimony of J. Gordon Rosen.)

Q. Did you see him prepare this particular certificate of discharge?

A. That I couldn't swear to, no, sir.

Trial Examiner Myers: Did you see Baldwin write?

A. You mean write out anything?

Q. Yes.

A. Yes, sir, I saw him writing those.

Q. Would you recognize his handwriting?

A. No, sir. That has been quite a long time ago. I don't believe I would, not his handwriting.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, these things that you read from yesterday, how long after the talks with the particular people involved were those notes prepared by you?

A. About as close as I could make it back to the forecastle, about an hour usually. [321]

Q. At any time was it more than an hour?

A. Yes, sir, at times it was more than an hour.

Q. What is the longest amount of time you waited before preparing those notes?

A. Well, I can't remember any particular instance.

Q. Did you ever wait a day?

A. No, sir, not that long.

Q. Several hours? A. Perhaps several hours.

Q. You wouldn't say half a day?

A. No, sir, I don't think so.

Q. Now did you put the dates down that you made those notes?

A. On most occasions, yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Other times you did not?

A. I think there are——

Q. Are there some notes there that have no dates? A. I would have to look through to tell.

Q. Will you do that, please?

A. I believe the dates are all in here, yes, sir.

Q. You have a date for every particular conversation referred to in these notes, is that it?

A. Yes, sir.

Q. Now you were reading from those notes yesterday, were you not? [322]

A. With some insertions, yes, sir.

Q. What insertions?

A. Well, the notes were written out hurriedly, and as I read them I would recall different instances.

Q. But at certain times you were reading directly from the notes? A. Yes, sir.

Q. Now you don't say, Mr. Rosen, that those notes that you read give the exact words which you overheard?

A. No, sir, I wouldn't say they give the exact words.

Q. Then when you said a particular officer or a captain on the ship, or Mr. Hand, made certain statement, you wouldn't say that the words were exactly as you read them from your notes?

A. No, sir, just the best of my memory at that time. [323]

Q. (By Mr. Van Dusen) Now, Mr. Rosen, I

(Testimony of J. Gordon Rosen.)

believe you testified yesterday that you were registered with the Seamen's Church Institute so that you might get aboard Texas Company ships, is that correct? A. Yes, that is right.

Q. You did that on two occasions after you said you were discharged from Texas Company ships, is that correct? A. Yes, sir.

Trial Examiner Myers: When you say "discharged" do you mean the expression he used, "fired"?

Mr. Van Dusen: I mean the expression Mr. Rosen used.

Trial Examiner Myers: "Fired"?

Mr. Van Dusen: What is that?

Trial Examiner Myers: "Fired"?

Mr. Van Dusen: Yes, when he says he was fired.

Q. (By Mr. Van Dusen) Now, you also testified that your purpose in doing that was to organize the seamen on board The Texas Company ships, isn't that correct?

A. To secure employment and if possible to organize the seamen.

Q. I am asking you what you testified to yesterday?

A. Well, under your questioning, I believe you asked me what I did aboard The Texas Company ships; why I went to work with The Texas Company ships. I said to secure employment—— [324]

Q. (Interrupting) Now, let me ask you if Mr.

(Testimony of J. Gordon Rosen.)

Examiner did not ask you this question and if you did not give him the answer:

“Trial Examiner Myers: If I may interrupt, what is the purpose, Mr. Rosen, of getting off one ship and then going down to the Seamen’s Institute and signing up on The Texas Company’s list?”

“Answer: Well, I tried to get back with The Texas Company because they were unorganized and I felt as long as they were unorganized it was the duty of every member of the Union to concentrate on that company until they did become organized.”

Did you so testify?

A. Yes, I made that statement.

Q. Now, Mr. Rosen, after these two first discharges; that is, after you say you were discharged from the “California” and the “Nevada”; you were pretty bitter toward The Texas Company, weren’t you?

A. Well, that is a hard question to answer.

Q. Well, I mean you had no friendly feeling for The Texas Company?

A. I didn’t have nothing against The Texas Company itself, but I felt that some of the officials were unfair.

Q. Well, the Company is represented by its officials isn’t it? Isn’t that so? [325]

Mr. Wright: Mr. Examiner, I suggest that attorney for the respondent is probably better qualified to answer that question than this witness. He does not happen to be an official of the company.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: You do not mean by that statement, Mr. Wright, that you would rather take the stand, do you?

Mr. Wright: I mean the attorney for the respondent is better qualified to know whether the officials of the company represent it than this man.

Trial Examiner Myers: Read the question.

(The last question was read.)

Trial Examiner Myers: That is argumentative. Will you reframe your question?

A. (By Mr. Van Dusen) Well, the company, The Texas Company, is not a person, isn't that so?

Mr. Wright: I suggest that is a legal conclusion, Mr. Examiner.

Trial Examiner Myers: Well, let's get on with it. Counsel wants to find out something from this witness and there is no use in putting in a lot of frivolous objections.

Q. (By Mr. Van Dusen) The company is really the officers who determine what must be done, isn't that so?

A. Well, the stockholders and the Board of Directors, I believe they set a policy for the officials to follow.

Q. You say you didn't like the officials. What officials? [326]

A. Well Mr. Tranberg——

Mr. Wright: Mr. Examiner, may I have the objection that this is irrelevant and immaterial.

Trial Examiner Myers: Objection overruled.

(Testimony of J. Gordon Rosen.)

A. I didn't care particularly about Mr. Tranberg.

Q. (By Mr. Van Dusen) Do you call him an official of the company or of that particular ship?

A. I don't know whether he is an official of the company while he is on the ship or what he is.

Q. All right. What other official?

A. That would be about all.

Q. That is all? That is the only one?

A. At that time, yes, sir, and Mr. Dave Rosen on the "California."

Q. You didn't like Captain Bergman very much, did you? A. That was on the "Washington."

Q. I am talking about all those ships. They are all operated by The Texas Company, aren't they?

A. I thought you asked me——

Q. (Interrupting) No. You said The Texas Company officials.

A. Well, then after I had the conversations, I naturally had a certain amount of unfriendly feeling toward Captain Bergman and the mate.

Q. What about Mr. Hand?

A. Well, a certain amount, yes. [327]

Q. How about Mr. Roney?

A. No, sir, I don't think I had any animosity toward him.

Q. Well, you didn't like the way The Texas Company operated its ships?

A. No, sir. I don't believe that was the statement I made.

(Testimony of J. Gordon Rosen.)

Q. Well, did you like the way they operated their ships? A. No, sir.

Q. Well, what is it? You either did or you did not.

A. The thing I didn't like on there was the letter they sent down promising us certain things. We asked for those things and we were discharged.

Q. Yes, but you were on the "California" long before that letter, weren't you? A. Yes, I was.

Q. And you didn't like the way that ship was operated?

A. Well, it is not a question of the way the ship was operated.

Q. Well the way it was run by the officers of the ship.

A. Just the way the mate handled us, yes.

Q. And that applied to three ships, didn't it?

A. Yes.

Q. And that was every ship you were on of The Texas Company, isn't that so? A. Yes, sir.

[328]

Q. And each time you still wanted to get on a Texas Company ship? A. Yes, sir.

Q. Now isn't it a fact, Mr. Rosen, that you were hired by the N. M. U. to go aboard and organize The Texas Company ships? A. No, sir.

Q. Weren't you paid by the N. M. U.?

A. No, sir.

Q. You got no compensation at all from the N. M. U.?

(Testimony of J. Gordon Rosen.)

A. I never received any compensation.

Q. Did they pay your subsistence while in Port Arthur? A. No, sir.

Q. Are they paying anything for your stay in Port Arthur since you left the SS "Washington" while waiting for this case to come up?

A. I am paying my own subsistence.

Q. They have paid you nothing at all?

A. No.

Trial Examiner Myers: Have you been promised any money? A. Sir?

Trial Examiner Myers: Have you been promised any money?

A. No, sir, I have never been promised any money.

Q. (By Mr. Van Dusen) Now, those two circulars that were introduced in evidence, did you say that you prepared those? [329]

A. Yes, sir, I prepared those.

Q. At your expense?

A. The crew on the SS "Washington" promised to produce the necessary funds. I put up seven and a half dollars of my own money as a part payment to see that they would be printed.

Q. How much did it cost to print those circulars? [330]

Mr. Wright: Mr. Examiner, I would like to object to the immateriality of the question.

Mr. Van Dusen: I think this is very important, Mr. Examiner.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Objection overruled.

A. About \$15.25.

Q. (By Mr. Van Dusen) Both circulars or just the one?

A. No, sir, the first circular was mimeographed.

Q. Where was that done?

A. In the Union Hall.

Q. On the union machine? A. Yes, sir.

Q. Did the union contribute anything toward the printing of the second circular?

A. Why they stood for the credit, yes, sir. They had the agreement that when the second circular was printed they would stand good for it until the total amount was collected?

Q. And you paid \$7.50 out of your own funds?

A. Yes, sir.

Q. And the union paid the balance?

A. No, sir, they just stood good for it; credit.

Q. Well, has it ever been paid?

A. That I couldn't tell you.

Q. Didn't you incur the obligation? Didn't you order the printing job done? [331] A. Yes, sir.

Q. Well, don't you know whether it has been paid?

A. Well, that is the affair of the union now.

Q. Then it is the affair of the union, is it?

A. The crew on the "Washington" brought in some \$10.75 or something and applied it on the bill and that wiped out the obligation of the union and my \$7.50 is still pending.

(Testimony of J. Gordon Rosen.)

Q. Did the crew give the money to you to take to the union to pay the bill off?

A. It was taken up to the Union Hall to be straightened out.

Q. You took it up to the Union Hall?

A. No, sir.

Q. Who took it up to the Union Hall?

A. The delegate on the ship.

Q. What is his name?

A. I don't remember that man's name.

Q. Were you with him? A. Yes.

Q. And you don't know his name?

A. No, sir.

Q. A delegate on your ship?

A. He was there after I was fired.

Q. And you don't know his name?

A. I don't recollect his name at this particular moment. [332]

Q. Is he one of those who signed the circular?

A. No, sir, I don't believe he is.

Q. Were these circulars shown to any people in the N. M. U. local office here before they were distributed? A. Yes, they were.

Q. To whom? A. Well, officials.

Q. Whom? The names? A. Mr. Ames.

Q. Mr. Ames? A. Yes, Mr. Ames.

Q. Anybody else? A. Mr. Vest.

Q. Who? A. Patrolman, Mr. Vest.

Q. Were they shown to the attorneys for the N. M. U.?

(Testimony of J. Gordon Rosen.)

A. That I don't know. They were left in the Union Hall and whom they were shown to I don't know.

Q. You left them there for a few days?

A. Yes, sir.

Q. And then they told you that they were satisfactory to them?

A. No, sir. The procedure we used, we mailed a sample copy——

Q. (Interrupting) No. I am talking about——

A. (Interrupting) The green circular? [333]

Q. Yes, sir. You took them to the union and you left them there?

A. No, they started circulating them immediately.

Q. You told me Mr. Ames and some others approved them? A. Yes, sir.

Q. So you must have left them there?

A. Yes, sir.

Q. How long did you leave them there before they were distributed?

A. Before they were distributed?

Q. Yes.

A. Not very long. Not more than a day.

Q. And then you went back for them?

A. Yes, sir.

Q. And they told you the circular was all right then?

A. They said they were distributing them at that time already.

(Testimony of J. Gordon Rosen.)

Q. They said the circular was all right to the union?
A. Yes, sir.

Q. Who told you that?
A. Mr. Ames.

Q. And then you started to distribute them?

A. They had been distributing some of them before this already.

Q. Did they tell you where to distribute them?
[334]

A. No, sir, they didn't tell me where to distribute them.

Q. You just decided that for yourself, is that it?

A. Yes, sir.

Q. Now, Mr. Rosen, at the time you applied at the Seamen's Church Institute for employment on The Texas Company ships were there any other companies that had not signed an agreement with the N. M. U. to your knowledge?

A. Yes, sir, there were.

Q. What companies?

A. The Sabine Towing Company.

Q. Any other?
A. Atlantic Refining.

Q. Any others?
A. Pure Oil.

Q. Any others?
A. Sun Oil.

Q. Sun Oil?
A. Yes.

Q. Did you try to obtain employment on those ships?

A. Well, I would have taken a job, but it was never offered to me.

Q. You testified yesterday that you asked the Seamen's Church Institute to be put on The Texas

(Testimony of J. Gordon Rosen.)

Company list, is that right? A. Yes. [335]

Q. So you wanted a job on The Texas Company ships? A. If possible.

Q. You were not interested in getting a job on these other company ships?

A. If they offered it to me I wouldn't have turned it down.

Q. But you asked to be put on The Texas Company list? A. Yes.

Q. Is that the only list that they have down there, The Texas Company list?

A. They have a ship's list, but I don't know whether they have an open list or not.

Q. Were you then on the open list? A. No.

Q. Then if the Cities Service Company or the Atlantic Refining Company wanted you they couldn't get you at the Seamen's Church Institute, could they?

A. They could have called down for me.

Q. But you were not on the open list?

A. No.

Q. You were on The Texas Company list?

A. Yes.

Q. So the Pure Oil or the Atlantic Refining couldn't get you through the Seamen's Church Institute, could they? A. No, sir.

Q. You were not interested in those ships of those companies, [336] were you?

A. It is pretty hard for a union man to get on those ships.

(Testimony of J. Gordon Rosen.)

Q. Weren't you interested in organizing those ships?

A. Well, we had other good men who were organizing those ships.

Q. You wanted to get on The Texas Company ships? A. Well, that was one of my duties.

Q. Just to organize The Texas Company ships was your duty? A. No.

Q. You didn't want to get on those other company ships?

A. Yes, I was registered up at the hall.

Q. I mean the companies that did not sign contracts with the N. M. U.?

A. Well, it is pretty hard for a union man to get on those ships.

Q. Why?

Trial Examiner Myers: From what I gather from your testimony you say it is pretty hard to get on those ships? A. Yes, sir.

Trial Examiner Myers: So when you registered at the Union Hall that meant that you didn't desire to get on the other boats?

A. I wanted to get on the other boats in that I wanted a job.

Q. (By Mr. Van Dusen) But you couldn't get a job on those [337] boats through the N. M. U. Union Hall, could you? A. No.

Q. Did you call up any of those other companies to try to get on their ships?

Mr. Wright: I object to that as argumentative.

(Testimony of J. Gordon Rosen.)

Q. How do they determine what man they will take when there is a job available?

A. Well, they call out the jobs at certain hours of the day. Then if the man is there, the highest number on the list receives it. [340]

Q. Then they do have a numerical list in the order in which you register? A. Yes, sir.

Q. Didn't you inquire to see how you stood on that list when you registered?

A. I can see it. It is put out in plain view.

Q. About how many names were there ahead of yours? A. About 60 or 70 A. B.'s.

Q. Now this is when you left the SS "Washington"? A. Yes.

Q. Have you gone back from time to time to see whether your position on that list has changed?

A. Yes, sir.

Q. What is your position today?

A. There are about ten or twelve A. B.'s ahead of me.

Q. Ten or twelve? A. Yes.

Q. Ahead of you? A. Yes.

Q. Then you are telling me that since July 18, 1938, only 50 men have been employed through the N. M. U. Hall on board ships, is that correct? Approximately 50? A. A. B.'s I am talking about.

Q. A. B.'s. Is that correct?

A. Except that I couldn't tell. I know that I have moved [341] up on the list, but under our system those men can be removed from the list for

(Testimony of J. Gordon Rosen.)

missing more than two meetings.

Q. Did you miss any meetings? A. No, sir.

Q. Then you would go up the list faster?

A. Yes, I would go up the list faster.

Q. You would go up the list faster, sure.

A. Yes.

Q. Now what I am asking you is this: You said there were approximately 60 ahead of you when you left the SS "Washington" and registered.

A. Sixty or seventy.

Q. Now you say you are No. 10.

A. Ten or twelve ahead of me.

Q. So that there are approximately 50 and perhaps less men who got jobs through the N. M. U. Hall since you first registered after you left the SS "Washington", isn't that correct?

Mr. Wright: Mr. Examiner, I would like to object to that for the reason that it is argumentative.

Trial Examiner Myers: Overruled.

A. I don't believe I understand your question.

Q. (By Mr. Van Dusen) After you left the SS "Washington" and registered at the N. M. U. Hall you just told me that there were approximately—I am not saying exactly—approximate [342] approximately 60 A. B.'s ahead of you on the list, is that correct? A. Approximately, yes.

Q. Now you say if men fail to attend two meetings they may be taken off that list, is that correct?

A. That is correct, yes, sir.

Q. That would move you up the list more

(Testimony of J. Gordon Rosen.)

quickly? A. It very seldom happens.

Q. Well, I mean it would move you up the list more quickly if it did happen?

A. If it did happen.

Q. Now you say today there are approximately ten or twelve names ahead of you?

A. Yes, that is right.

Q. That means that since the day you first registered and up to today approximately 50 or 48 men have gotten jobs through the N. M. U. Hall; that is, have either gotten jobs or have been eliminated from the list?

Mr. Wright: I would like to object to the question for the reason that it is argumentative.

Trial Examiner Myers: I will overrule it.

Q. (By Mr. Van Dusen) You can subtract 12 from 60, can't you?

A. The point is that there were that many men ahead of me that shipped out and left.

Q. And is that correct? [343]

A. Yes, I guess that is correct.

Q. Now if you are No. 10 now that is approximately the same number that you have over at the Seamen's Church Institute, isn't it?

A. No, sir. There is twelve ahead of me at the union hall and on the Seamen's Institute the list also contains ordinary seamen and in the union hall it contains only A. B.'s.

Q. Well, now let me ask you this: Are more men hired out of the N. M. U. Hall than off The Texas

(Testimony of J. Gordon Rosen.)

Company list on the average?

A. I am not in a position to say that.

Q. Well now you are a member of the N. M. U.?

A. Yes, sir.

Q. You are an active organizer? A. Yes.

Q. You know a good deal about the Texas Company ships and about the list over at the Seamen's Church Institute. Now would you say that The Texas Company gets more seamen on an average, more A. B.'s, than the N. M. U.? You would not say that, would you?

Mr. Wright: Mr. Examiner—

Mr. Van Dusen: Of his own knowledge. I am asking of his own knowledge.

Mr. Wright: For your benefit, the N. M. U. keeps its list with reference to A. B.'s. This man does not keep up [344] with cooks and stewards and ordinary seamen and other men on other lists. Secondly, he knows about the A. B.'s probably, but he doesn't know about the engine room, the stewards, and so forth.

Mr. Van Dusen: I am asking him about the two lists.

Mr. Wright: All right. Ask him about the A. B.'s. [345]

Trial Examiner Myers: Gentlemen, if you have any objections will you please make them.

Mr. Wright: I am objecting for the reason that this man has no knowledge with respect to the question asked him.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Well, we will find out what knowledge he has. He was asked if he knew.

Q. (By Mr. Van Dusen) What men are registered on the list at the N. M. U. Hall on which you are registered? A. A. B.'s.

Q. What men are listed on the lists over at the Seamen's Church Institute, The Texas Company list?

Trial Examiner Myers: On which you are registered? A. A. B.'s and ordinary seamen.

Q. (By Mr. Van Dusen) Now, would you say that The Texas Company hires from Port Arthur more A. B.'s than ordinary seamen combined on an average than the N. M. U. furnishes to other ships from its list?

A. It would be just a matter of opinion.

Q. Well, what is your opinion? Doesn't the N. M. U. supply a good deal more seamen, more A. B.'s and ordinary seamen, than The Texas Company? A. I doubt it.

Q. How many companies have signed agreements with the N. M. U.?

A. Oh, quite a few. [346]

Q. The Gulf? Is that right? A. Yes.

Q. The Gulf is a large company?

A. But they have five ships laid up. That puts a lot of men on the beach.

Q. All right. How many ships have they got operating? A. About fifteen I understand.

Q. Fifteen? A. Yes.

(Testimony of J. Gordon Rosen.)

Q. They all come to this port?

A. The majority of them do, yes.

Q. What other companies have signed with the N. M. U.? A. Well, the Standard Oil.

Q. How many ships do they have coming to this port? A. Not many.

Q. How many approximately?

A. Maybe one a week.

Q. Any other companies who have signed with the N. M. U.? A. Tidewater.

Q. How many ships do they have coming to this port? A. About the same average.

Q. Well, how many? A. About one a week.

Q. Any other companies?

A. The Kellogg Steamship Company. [347]

Q. How many do they have coming into this port? A. They rarely come in here.

Q. Any other companies?

A. The C. D. Mallory.

Q. How many ships do they have coming here?

A. About two a month. Approximately, now. I am not stating definitely.

Q. Yes, I realize that. What other company?

A. Lykes Bros.

Q. How many do they have coming in here?

A. Very seldom. Perhaps once a month.

Q. Any other companies?

A. Yes, there are some other companies, but this is not their pay-off port like it is in The Texas Company.

(Testimony of J. Gordon Rosen.)

Q. Well, do they get seamen here?

A. Well, seamen might quit here.

Q. You say seamen might quit here and then they would have to be replaced, wouldn't they?

A. Yes, sir.

Q. Any other company?

A. I believe I have mentioned C. D. Mallory, Gulf, Tidewater, Kellogg.

Q. Standard Oil?

A. Standard Oil, Lykes Bros.

Q. Any others? [348]

A. The American West African Line.

Q. How many ships do they have coming in here?

A. Oh, they have one come in here about every four months; not steady.

Q. Any other ships?

A. Not regularly that I know of.

Q. Now, of all those companies that you have mentioned having ships coming in here, doesn't the N. M. U. furnish more A. B.'s to those ships than the Seamen's Church Institute furnishes A. B.'s and ordinary seamen for Texas Company ships?

A. I don't think so, because the seamen on The Texas Company ships are more inclined to recognize Port Arthur as their home port, the place where they have practically a residence, and they get off down here, but the other ships, most of their men get off in New York, up North somewhere.

Q. Then, you think The Texas Company does

(Testimony of J. Gordon Rosen.)

a bigger business than all these other shipping companies concerned, is that so?

A. It is a matter of opinion. It is a question I wouldn't care to answer.

Q. A pretty large operator?

A. Yes, sure, a pretty large operator.

Q. And that is the reason you want to organize them, isn't it?

A. Well, that gets into the—— [349]

Q. (Interrupting) Isn't that so?

A. No, that is not my reason for wanting to organize them. That is my duty as a union member.

Q. It is also your duty to organize other ships?

A. If possible. If I can get aboard them.

Q. Well, can you get aboard The Texas Company ships? A. Sometimes.

Q. But the others are pretty hard to get on?

A. Well——

Q. They are pretty tough?

A. They are hard enough.

Q. Not as tough as The Texas Company? What?

A. Well, I would have——

Q. (Interrupting) All right. All right. Never mind. Now Mr. Rosen, you have been on a number of other ships. Were you ever discharged from any other ship? Were you ever fired from any other ship? A. Well, it is possible.

Q. Well, you have a pretty good memory. You remember everything that happened on these Texas Company ships. Now, just think. Were you ever

(Testimony of J. Gordon Rosen.)

fired from any other ship?

A. Not that I know of to my knowledge.

Q. Haven't you got a pretty good memory?

A. It is up to a certain point, yes, sir.

Q. You mean when it involves Texas Company ships? [350]

Trial Examiner Myers: All right now, if we have to go around in a rigamarole sort of way, now, let's do it. Were you ever fired by the Gulf Company?

A. No, I don't believe I was ever fired by the Gulf Company.

Trial Examiner Myers: What other companies have you worked for? A. Mississippi.

Trial Examiner Myers: Were you ever fired by the Mississippi Company? A. No.

Trial Examiner Myers: What other company?

A. Waterman.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: What other company?

A. Lykes Bros.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: What other companies?

A. Swayne & Hoyt.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Mr. Van Dusen: What was that company?

A. Swayne & Hoyt. [351]

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: What about the company that went out on strike? What company was that?

A. The Waterman Steamship Company went out on strike.

Trial Examiner Myers: And they took you back without firing you?

A. I never tried to get back.

Trial Examiner Myers: After the strike, you went where? A. On the *Swayn* & Hoyt ship.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: Were you ever fired by any company, whether a steamship company or a land company? In your whole life were you ever fired? A. Well, I probably was.

Trial Examiner Myers: Well, what are the facts.

A. I don't know.

Trial Examiner Myers: You know whether or not you were fired, don't you?

A. Well, if I tried to recall something before I lost my hair I get in some kind of difficulty. [352]

Q. (By Mr. Van Dusen) You mean the time you lost your hair affected your memory?

A. Well, I don't know what happened.

Q. You mean your memory is not so good now?

A. No, I think I am getting over it now.

Q. You can just remember as far back as when you started on The Texas Company ships, is that so?

(Testimony of J. Gordon Rosen.)

Mr. Wright: I object to that line of questioning from counsel for the company.

Trial Examiner Myers: Overruled.

A. Well, I don't like to bring it out personally, but when my hair fell out I went to the hospitals, I went to specialists, I took injections, I had special kind of pills.

Trial Examiner Myers: What has that got to do with being fired? What has that got to do with it?

A. When I try to remember back to that it just brings out the fact that I can't hardly remember anything but my hair falling out. I can remember some of the things, but I can't remember them definitely.

Q. (By Mr. Van Dusen) Well, you remember that you were a seaman for ten years?

A. Approximately.

Q. And you remember that you worked for ten steamship companies?

A. Approximately. [353]

Q. Still you don't know such an important thing as being fired? Wouldn't that stand out in your mind?

A. It would under ordinary circumstances, yes.

Q. Are these extraordinary circumstances?

A. I don't know.

Q. Then you may have been fired a number of times, is that so?

A. Oh, I may have been fired.

Q. All right. I will take that. You say you were

(Testimony of J. Gordon Rosen.)

in a hospital. What hospital was that?

A. Well, the New Orleans Marine Hospital.

Q. What is that?

A. The New Orleans Marine Hospital.

Q. About what time?

A. When my hair fell out.

Q. Approximately what date was that?

Trial Examiner Myers: You told us yesterday it was in 1932.

A. About six years ago.

Q. (By Mr. Van Dusen) 1932?

A. About that time.

Q. About what month? Do you remember?

A. The end of the year.

Q. November or December?

A. Yes, right around there or after Christmas.

Some time in [354] there.

Q. In December then? December or January?

A. Yes.

Q. Now when you were on these two Gulf ships you were a member of the N. M. U., were you not?

A. Yes, sir, I was.

Q. Did you have any complaints against the Gulf Company regarding conditions on those ships while you were there?

A. Yes, sir, I believe I did.

Q. What complaints?

A. On the "Gulfbelle" one was the question of overtime.

Q. Yes. Anything else?

A. Quartermasters working on a watch below.

Q. Anything else?

(Testimony of J. Gordon Rosen.)

A. That is approximately all.

Q. How about the other Gulf ship?

A. The "Gulfgem"?

Q. The "Gulfgem".

A. Well, there was quite a bit of difficulty on her.

Q. What was the difficulty?

A. Well, when I came on board of the ship the delegates on there had some difficulties.

Q. Over what?

A. Over the discharge of a certain man.

Q. What happened? [355]

A. Well, he was reinstated.

Q. You had a regular procedure for that?

A. What is that?

Q. You had a regular procedure for getting reinstatements? What did you do about it? Did you represent the crew?

A. No, I didn't represent the crew.

Q. You were not a representative on those ships? A. Not at that time.

Q. Were you at any time? A. Yes, sir.

Q. When?

A. On the "Gulfbelle" I was elected delegate and on the "Gulfgem" I was elected delegate.

Q. You were a delegate on both ships?

A. Yes, sir, I was.

Q. Then you assisted in handling those complaints with the Gulf Company?

(Testimony of J. Gordon Rosen.)

A. While I was a delegate I assisted in handling complaints with the masters of the ships.

Q. Then you engaged in union activities on those ships, did you not? A. Yes, sir, I did.

Q. You are sure you were not fired from either of those ships? A. No, I was not fired. [356]

Q. You are positive of that?

A. Yes, I am positive.

Q. Was any complaint made against you or your activities on those ships? A. Not to me.

Q. Well, do you know?

A. Just that question——

Q. (Interrupting) Were any complaints made by the Gulf Company regarding your activities aboard those two ships?

A. The Gulf Company didn't make any complaint.

Q. Or by the Gulf Company officials or the officers of those ships?

A. Well, the captains had the regular discussions and the captain on the "Gulfbelle" just wanted to stress the fact that they did have an agreement and we should live up to it, which we agreed to, and the captain on the "Gulfbelle" had discussions about the same nature.

Q. Did he ever have any dispute with you? Disagree with you?

A. Yes, he disagreed with us.

Q. How were those disagreements disposed of?

A. Well, if we can't dispose of them on the ship

(Testimony of J. Gordon Rosen.)

by the ship's committee, we call the delegates from shore. The delegates come down to the ship. If they can't dispose of them, they are handled by an arbitration committee and that is [357] the manner in which they are settled.

Q. Were any charges made by the captains or other officials of the Gulf Company against you and your activities on those two ships?

A. Not that I know of.

Q. Now when you were on the SS "Nevada" who was your boss? Tranberg?

A. No, sir, the boatswain is my supervisor.

Q. He is your supervisor and who is his boss? Tranberg? A. The mate, Carl Tranberg.

Q. So Tranberg was really your boss? He was over the boatswain, wasn't he?

A. He was over the boatswain.

Q. Now it was Tranberg's duty, was it not, to see to it that the A. B.'s, of which you were one, and the boatswain did their duties aboard ship, isn't that correct? He was responsible for the A. B.'s and the boatswain, wasn't he?

A. Well, the mate, Mr. Tranberg, gave the orders to the boatswain and the boatswain saw that the job was done correctly.

Q. I mean the orders applying to you all came from Tranberg or the captain? A. Yes, sir.

Q. Now Tranberg made periodic inspections and tours of the vessel to see that the A. B.'s and the

(Testimony of J. Gordon Rosen.)

boatswain were attending to their duties, did he not? [358]

A. Most of the time he did, yes, sir.

Q. He knew when you were holding meetings of the crew on off hours, did he not? Did he ever see you holding meetings?

A. I don't know whether the mate ever saw us hold meetings or not. The captain did at one time.

Q. The captain did? A. Yes, sir.

Q. The captain didn't interfere with the meetings in any way, did he?

A. No, sir, he just walked by.

Q. Now didn't the mate at times see you in those meetings? He is around more than the captain, is he not?

A. That would be a hard question to answer.

Q. Well, do you remember? You remember a lot of other things that happened on that boat. Now do you remember that?

A. Are you referring to the——

Q. (Interrupting) The meetings of the crew that you called from time to time.

A. I don't remember the mate ever walking by our meetings. We usually held them in the mess room and I don't remember the mate walking by.

[359]

Q. You held a lot of meetings with the members of the crew and had a lot of discussions with the members of the crew?

A. Why we usually held meetings, on a foreign

(Testimony of J. Gordon Rosen.)

trip, about twice on the way across and twice on the way back.

Q. Well, if you had particular grievances you held a special meeting, didn't you?

A. Yes, that is right.

Q. About how many of those did you have?

A. Whenever the occasion arose.

Q. About how many on the "Nevada"?

A. About four on the "Nevada".

Q. About four on the "Nevada"?

A. At least.

Q. Now, if you had a very special grievance you might hold a meeting of the members of the crew during working hours, might you not? That is with reference to special grievances.

A. It is possible, yes.

Q. Now, isn't it a fact that Chief Mate Tranberg found you loafing on a number of occasions?

A. Not that I can remember.

Q. Well, just think a little bit now. Isn't it a fact that on several occasions he found you loafing; not attending to the duties that you were supposed to be attending to?

A. He never said anything to me about it.

Q. I didn't say that he said anything to you about it, but [360] didn't he find you on several occasions not attending to your duties?

A. Not that I know of.

Q. Well, he might have? It is possible.

A. What duties are you referring to?

(Testimony of J. Gordon Rosen.)

Q. Duties which you were supposed to be performing on board the ship as an A. B.

A. Well, I always tried to attend to my duties.

Q. I realize that, but isn't it a fact that on several occasions he found you not attending to your duties?

A. I can't remember of any, no.

Q. Well, it is possible that he might have? Isn't that so?

Mr. Wright: Mr. Examiner, are we going to delve into the realms of speculation?

Trial Examiner Myers: Were you ever admonished by the mate for loafing on the job?

A. No, sir.

Trial Examiner Myers: Did anybody else admonish you about loafing on the job?

A. No, sir.

Trial Examiner Myers: Did you ever loaf on the job?

A. Well, I don't know whether I did or not.

Trial Examiner Myers: Whether you were caught at it or not caught at it did you ever loaf?

[361]

A. Oh, it is possible that I did.

Q. (By Mr. Van Dusen) Isn't it a fact that on two occasions the mate found you in your bunk playing cards in your pajamas?

A. I don't wear any pajamas.

Q. You never wear them?

A. I do wear them when I go to the Marine Hospital.

(Testimony of J. Gordon Rosen.)

Q. Do you wear them up in the cold climate up north?

Trial Examiner Myers: Maybe he wears a night shirt.

Q. (By Mr. Van Dusen) What do you wear?

Mr. Wright: I object to the materiality of it.

Mr. Van Dusen: No, sir, it is not immaterial.

Trial Examiner Myers: Let me decide. I overrule the objection.

A. I just wear a singlet. Singlet underclothes; underwear.

Q. (By Mr. Van Dusen) You slept in that?

A. Yes, sir.

Q. Well, isn't it a fact that Chief Tranberg found you in that outfit on occasions when you were supposed to be on duty? A. No, sir.

Q. Now, on the SS "Washington" you were an A. B., were you not? A. Yes, sir, I was.

Q. Who was your immediate superior on the SS "Washington"? [362] A. The boatswain.

Q. And who was his superior? Who was the mate? A. Mr. Johanson.

Q. So, he had the same position as Tranberg had on the "Nevada", is that correct?

A. Yes, sir.

Q. And issued the order to the boatswain and the A. B.'s, such as yourself, isn't that correct?

A. Yes, sir.

Q. Now, isn't it a fact that Chief Johanson on

(Testimony of J. Gordon Rosen.)

several occasions found you not attending to your duties as an A. B.?

A. Not that I know of, no.

Q. It is possible? He may have.

Mr. Wright: Mr. Examiner, I object again to delving into the realms of speculation as to whether or not he possibly might have.

Mr. Van Dusen: This is cross examination, Mr. Examiner.

Trial Examiner Myers: This is cross examination and I think he is entitled to more latitude. I will overrule the objection.

Mr. Wright: It seems to me the proper question would be: Did he loaf?

Trial Examiner Myers: You may proceed if you will please, Mr. Van Dusen.

Q. (By Mr. Van Dusen) Isn't it a fact that Chief Johanson on [363] several occasions found you not attending to your duties on board the SS "Washington"?

A. Not that I remember, no, sir.

Trial Examiner Myers: Well, if he testified to that effect would he be telling the truth?

A. To what effect?

Trial Examiner Myers: To the effect that he found you on several occasions loafing.

A. No, sir, I don't believe he would be telling the truth.

Q. (By Mr. Van Dusen) Isn't it a fact that on several occasions Chief Johanson and Captain

(Testimony of J. Gordon Rosen.)

Bergman warned you that you would have to pay more attention to your duties? A. No, sir.

Q. You deny that? A. I do.

Q. Now, on the SS "Washington" you spent a good deal more time in union activities than you did on the "Nevada"?

A. Approximately the same.

Trial Examiner Myers: Well, what was the lineup of the union men on the "Washington"? Was it almost a hundred per cent unionized?

A. Yes, sir, they were approximately a hundred per cent on the "Washington".

Trial Examiner Myers: What about the "Nevada"?

A. They were approximately a hundred per cent on the "Nevada" [364] also.

Trial Examiner Myers: Which was the boat that only had one non-union man on it?

A. That was the "Nevada" on the trip to Spain.

Trial Examiner Myers: What about the other trip on the "Nevada"?

A. On the other trip there were several non-union men came aboard. This was about March 14 of 1938, and we talked to them and asked them about joining, which they did.

Trial Examiner Myers: I don't want to go into details. I just want to know how many non-union men were there on the "Washington"?

A. About two.

Q. (By Mr. Van Dusen) You say there were

(Testimony of J. Gordon Rosen.)

just two non-union men on the "Washington" of the whole crew? A. That is all.

Q. The rest were all N. M. U. men?

A. They were.

Q. Now, you didn't have to do much organizing on the "Washington" then, did you?

A. Well, they hadn't been holding any meetings on there.

Q. What is that?

A. That hadn't been holding any meetings on there previous to the time when I came aboard; Buckless, Zinkiewycz and myself; and we asked them why and Alfred Wukasch, an ordinary [365] seaman, said that when the crew did hold meetings and got organized the delegates were fired. [366]

Q. Now, did the captain of the "Washington" ever go by when you were holding one or more of those meetings?

A. No, sir, not that I know of.

Q. How about Chief Mate Johanson?

A. No, sir, not Chief Mate Johanson that I know of.

Q. You mean they never saw you holding any of those meetings?

A. It is possible they might have seen us but I didn't see them.

Q. How many attended those meetings on an average?

A. All members of the unlicensed personnel.

Q. All of them? How many? How many would

(Testimony of J. Gordon Rosen.)

that be? A. All except the men on watch.

Q. Approximately how many?

A. It would be about 17 or 18.

Q. That would ordinarily be noticed?

A. Yes, sir, it would.

Q. So it is possible that the captain and the chief mate did notice those meetings?

A. It is possible, yes.

Mr. Wright: I object to that for the reason that it calls for a conclusion of the witness about which he has no knowledge and has already testified he has no knowledge.

Trial Examiner Myers: Will you read the question, Mr. Reporter? [367]

(The last question and answer were read.)

Trial Examiner Myers: Objection overruled.

Q. (By Mr. Van Dusen) Now generally, what was the nature of the union activities on the SS "Washington"?

A. The nature of the union activities?

Q. Yes.

A. The nature of the union activities was to secure minimum working rules as set forth in the Tanker Agreement.

Q. You knew The Texas Company had not signed that agreement?

A. Yes, sir, that is right.

Q. You wanted to secure them for that ship?

A. Yes, sir, for that ship.

Q. Did you want to secure them for all the

(Testimony of J. Gordon Rosen.)

ships of The Texas Company?

A. No, sir, I just wanted the master of that ship to live up to that letter from Captain Roney which stated that they would live up to the best conditions in the industry.

Q. They didn't say they would live up to the Standard Tanker Agreement?

A. Well, that is only the minimum conditions in the industry.

Q. I mean they didn't say that they would live up to the conditions of the Standard Tanker Agreement?

A. That letter said they would live up to the best condi- [368] tions in the industry.

Q. But they didn't say they would live up to the conditions of the Standard Tanker Agreement?

A. No, sir.

Q. What other activities? What else?

A. We sent out wires to Captain Roney and went up to talk to the mate and captain—of course, he refused permission as delegate—drafted letters to be sent to Captain Roney.

Q. Now you say you sent telegrams?

A. Yes, sir.

Q. Did the captain know you sent those telegrams? A. I don't believe he did, no, sir.

Q. Didn't you get his approval?

A. They were sent from shore.

Q. Sent from shore? A. Yes, sir.

Q. Not sent from the ship? A. No, sir.

(Testimony of J. Gordon Rosen.)

Q. Mr. Rosen, this open letter to The Texas Company, which is Exhibit No. 9 introduced by the Labor Board, you are on that as ship delegate, Gordon Rosen, is that correct? A. Yes, sir.

Q. And you prepared that?

A. With the aid and assistance of other members of the crew.

Q. And you approved the statements made in that open letter? [369]

A. We signed it as a matter of course on that ship.

Q. I mean it is a statement which you signed and the facts stated in there are true according to your knowledge, is that correct?

A. Well, I wouldn't say to that.

Trial Examiner Myers: Well, will you pick out what part of that letter it is which you say is not true?

Q. (By Mr. Van Dusen) Well let me ask this one preliminary question: You would not sign a statement that is not true? You would not make a statement that is false?

A. Not if I could avoid it.

Q. Is there anything false in this letter?

A. Not that I absolutely know of, no.

Q. You checked everything before you sent it out?

A. Well the letter was sent out by the crew.

Q. But you were one of those preparing it?

A. Yes, I was one of those preparing it.

(Testimony of J. Gordon Rosen.)

Q. And you read it? A. Yes, sir.

Q. And you checked everything that was said in there?

A. Well I just concurred in it as a matter of course.

Q. As a matter of course? A. Yes.

Q. Is everything in there true according to your knowledge? Every statement made in there, is that true? [370]

Trial Examiner Myers: Show him the exhibit.

Mr. Van Dusen: Do you want to see it?

A. There are quite a few statements made in there.

Q. (By Mr. Van Dusen) Well, you said you helped prepare it and you read it and you approved it.

Trial Examiner Myers: Is that the one you said you drafted?

A. Yes, sir, with the assistance of other members of the crew.

Trial Examiner Myers: Well, read it over carefully and let's see what you think about it.

Q. (By Mr. Van Dusen) Have you read it?

A. Yes, sir.

Q. Is everything in there true?

A. It is generally believed by N. M. U. men that it is true.

Q. Do you of your own knowledge know that everything in there is true?

A. I couldn't swear it is true, no, sir.

(Testimony of J. Gordon Rosen.)

Q. Would you put anything in a statement like this that is not true?

A. Just what do you mean by that?

Q. This is a letter that went to all Texas Company seamen, is it not? A. Yes, sir. [371]

Q. Now would you mislead them? Would you want to mislead them?

A. No. It is not an attempt to mislead them.

Q. Well, is everything in there true?

A. It is generally believed to be true by Texas Company men.

Q. Don't you believe you ought to check it carefully before sending a statement like that out?

Mr. Wright: I object to it because it is irrelevant, immaterial and argumentative.

Trial Examiner Myers: Overruled.

A. You mean absolutely check up on each and every single statement?

Q. (By Mr. Van Dusen) You make some general statements and I want to know whether they are true.

A. They are generally believed to be true.

Q. Do you know whether or not they are true?

A. I have heard other sailors talking about this——

Trial Examiner Myers: Do you believe them to be true?

A. I believe them to be true to the best of my knowledge.

(Testimony of J. Gordon Rosen.)

Mr. Martin: When you wrote them, did you believe them to be true?

A. When I wrote them with the assistance of others I did believe them to be true.

Q. (By Mr. Van Dusen) At the time you wrote them, did you [372] believe them to be true?

A. I believed most of them to be true. [373]

Q. Not all of it?

A. I couldn't swear to all of it absolutely, definitely.

Q. Let's look at something. "Verbal contracts with The Texas Company are worthless." What verbal contracts are you referring to?

Mr. Martin: Mr. Examiner, on behalf of the Board I would like to point out that this letter was offered and received, not for the statements made in it, which have no bearing on this case other than the fact that they are statements. This letter was offered and received yesterday for the sole purpose, and in the course of some discussion it was pointed out that that was the sole purpose, of showing that Mr. Rosen was engaging in union activities by writing circular letters; or at least one; and that there was ample opportunity for those activities, which he put in writing, to come to the notice of officers of the company; that is, of officials of the company or officers of the ships; and I submit, in view of the limited reason for which this letter was offered and received yesterday, that the present line of question-

(Testimony of J. Gordon Rosen.)

ing should not be allowed and is not material to the issue.

Mr. Van Dusen: Now, Mr. Examiner, I want to question him for two reasons; one, to show that this is not legitimate union activities, but propaganda to stir up trouble; and, secondly, to test this man's credibility.

Mr. Wright: May I interpose the further objection that [374] this union is not here on trial and until it is brought to trial for some of its activities, I think the questioning is certainly immaterial and irrelevant. Whether or not this man engaged in union activities that Mr. Van Dusen believes to be legitimate is immaterial. The fact remains that he did do it; that it was union activity and that this union activity, legitimate or illegitimate, may have led to his discharge. That of course leads us to the conclusion that all this questioning is irrelevant and immaterial and has no bearing on this case at all.

Mr. Van Dusen: This man is charging us with unfair labor practice and discrimination against him because of his union activities and in support of that charge he introduces this particular letter as evidence of his engaging in union activities. I want to show that it is not legitimate union activities and I want to test his credibility to show that he may be lying at times and I want to go further into that.

Mr. Martin: Mr. Examiner, in Section 2 of the Wagner Act there is no definition of union activities. The issue is not whether in somebody's esti-

(Testimony of J. Gordon Rosen.)

mation the activities engaged in were legitimate.

I should like to say further that we must not veer into what has been referred to as a discussion of propaganda, because propaganda has acquired altogether too broad a meaning for our handling within the narrow scope of our issues. [375]

Mr. Van Dusen: Mr. Examiner, if this letter was sent out to stir up antagonism against The Texas Company then it was not union activities under the Act.

Mr. Wright: Mr. Examiner, may I make this statement, please, sir: I don't believe the Wagner Act or any other act or law gives to The Texas Company a right or an interest in the welfare and legitimacy of a union. It seems to me it is not the function of The Texas Company to try to become the guardian angel of legitimate activity of the union.

Mr. Van Dusen: I am talking about this man; his activities.

Mr. Wright: Or his activities; a guardian angel of his activities.

Mr. Van Dusen: I disagree. [376]

Trial Examiner Myers: I will overrule the objection.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, you make the statement here that verbal contracts with The Texas Company are worthless. Are you referring to——

A. Referring to the letter from Mr. J. C. Roney

(Testimony of J. Gordon Rosen.)

stating that they will live up to the best conditions in the industry, and will not discriminate against any union man, and that they will listen at all times to complaints of seamen and so forth.

Q. You testified in this trial that the captains and the chief mates and Mr. Hand listened to you and had talks with you, did you not?

A. They did, yes.

Q. That is something you cannot complain about, is it? A. They didn't always listen——

Q. I mean they talked to you?

A. They talked to us, yes.

Q. Then you have no complaint on that at all?

A. Yes, I do.

Q. They did talk to you?

A. What do you mean.

Q. The captains and the chief mates talked to you? A. Yes.

Q. And then you presented your grievances?

A. They wouldn't allow us at times.

Q. You presented your grievances to them?

[377]

A. We tried to present our grievances. Sometimes they wouldn't recognize us.

Q. Mr. Roney didn't say in his letter that every grievance you had he would comply with?

A. No, sir, but he said in his letter that he would give the crews the right to select a man to represent them, or the crews should select a man to speak for them.

(Testimony of J. Gordon Rosen.)

Q. You did do that, didn't you?

A. Yes.

Q. And you spoke to the captain and the chief mate, did you?

A. We did.

Q. Did you?

A. Yes. They didn't recognize us as such.

Q. Did he say that he was going to give you what you wanted?

A. That is not the point.

Q. They spoke to you. Mr. Roney said in his letter, you say, that you should select representatives, and that the captain would talk to you?

A. He said they would allow them to bargain for the crew.

Q. You did bargain?

A. They wouldn't recognize us.

Q. You bargained, you talked?

A. Talked to them, but they wouldn't recognize the representatives.

Q. You mean they wouldn't give you what you wanted? [378]

Mr. Wright: Mr. Examiner, I believe Mr. Van Dusen is calling for a conclusion.

Trial Examiner Myers: He changed it. Is that what you mean?

Q. (By Mr. Van Dusen) What do you mean by bargaining?

A. Presenting our grievances, and seeing if we can't get a dispute settled by elected representatives of the crew.

Q. All right, you did that, didn't you?

(Testimony of J. Gordon Rosen.)

A. Tried to do it.

Q. You saw the captain and the chief mate, didn't you, and you had talks with them, didn't you?

A. Up to the point where we announced ourselves as the union delegate or the crew's representative.

Q. But they talked to you?

A. Up to that point.

Q. Now, what other contracts were made with The Texas Company?

A. That is the verbal contract I am referring to.

Q. I say, verbal contract.

A. There are six provisions in that, in the letter from Mr. J. P. Roney.

Q. You consider each provision as a separate contract, is that right? A. Yes, we do.

Q. Now you say: "It has been pointed out to this company [379] that the Standard Tanker Agreement was the minimum set of conditions that the National Maritime Union would agree to exchange for a signed contract." Who pointed that out to The Texas Company?

A. We sent a letter to Captain Hand also to Captain Roney.

Q. Did you retain copies of those letters?

A. I believe they are in the files of Mr. Ames.

Mr. Van Dusen: May I ask Mr. Wright to produce those letters referring to the Standard Tanker Agreement?

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Have you got the originals?

Mr. Van Dusen: I haven't seen them.

Mr. Wright: It may take us a while to find them. We will do our best.

A. That can refer to letters sent to officials of The Texas Company. With them, we include telegrams.

Q. (By Mr. Van Dusen) All right. To whom were the telegrams sent? A. To Mr. Roney.

Q. Have you a copy of the telegram?

A. No, sir.

Trial Examiner Myers: Did you make a copy?

A. We made a copy, but it was lost.

Mr. Martin: Mr. Examiner, may I suggest that to the best of his recollection, Mr. Rosen testified on direct examination [380] yesterday as to the content of a telegram he sent Captain Roney from Chester, Pennsylvania.

A. Yes, from the Pennsylvania Railroad depot.

Mr. Martin: If my memory serves me correctly, Mr. Rosen testified on direct examination that he himself sent only one telegram to Captain Roney, but that he is aware that another telegram was sent to Captain Roney at about that time concerning the same subject.

A. That is right, yes, sir.

Q. (By Mr. Van Dusen) You don't know what was in that second telegram?

A. I read a copy of it.

(Testimony of J. Gordon Rosen.)

Q. Do you know what was in it?

A. About Captain Bergman refusing to recognize the elected delegates of the crew, and refusing to live up to the minimum of the Standard Tanker Agreement.

Q. To the best of your recollection, that was it?

A. It was.

Q. Who sent it?

A. Mr. Cline, radio operator.

Q. He signed it? A. He did.

Q. You read it? A. I did.

Q. To whom was it addressed? [381]

A. To Mr. J. P. Roney.

Q. What was the date it was sent?

A. The date was about, on or about July 3.

Q. From where?

A. Western Union office in Marcus Hook, Pennsylvania.

Q. Now, you say: "There are at least twenty different clauses in these minimum conditions that The Texas Company refuses to live up to." Will you name those, in the Standard Tanker Agreement?

A. I have a copy of the Standard Tanker Agreement, I believe.

"Section 3. The company shall permit, by the distribution of passes, the authorized representatives of the Union to board the company's vessel for the purpose of consulting with the unlicensed personnel employed thereon."

(Testimony of J. Gordon Rosen.)

Q. That is one? A. That is one.

“Section 5. Any disputes or grievances arising in connection with the terms and provisions of this agreement shall be settled according to the following procedure:

“The unlicensed personnel——”

Trial Examiner Myers: What are you doing?

Q. (By Mr. Van Dusen) You don't have to read it.

A. It refers to the election of delegates, or presentation of complaints to his immediate superior, and the procedure [382] involved in settling controversies.

Q. You had no trouble on the “Washington” presenting complaints to the captain?

A. I was not recognized as a delegate.

Q. You had no trouble presenting complaints?

A. Up to the time I announced myself as a representative of the crew.

Q. You had no difficulty presenting them to the captain? You could present them?

A. We talked to him.

Mr. Wright: May we have it understood that we have our objection to all this line of questioning.

Trial Examiner Myers: That is correct, the same objection and the same ruling.

Mr. Wright: And it carries with it our exception.

Trial Examiner Myers: Yes, sir, it automatically carries your exception.

Q. (By Mr. Van Dusen) That is two?

(Testimony of J. Gordon Rosen.)

A. "The company agrees to post on the bulletin board of each vessel a list of rules which constitute cause for which members of the unlicensed personnel may be discharged without further notice.

"For other offenses not on the posted list, members of the unlicensed personnel shall not be discharged without first having been notified in writing that a repetition of the of- [383] fence will make him liable to dismissal. In the event that the members of the union feel that any of the rules or regulations promulgated by the company are inconsistent with the terms of this agreement, such members agree to make proper and orderly representation as outlined under the grievance machinery of Section 5.

"The company shall comply with such laws and regulations as the Secretary of Commerce shall issue through the Bureau of Marine Inspection and Navigation as to all matters relating to manning, quarters and equipment, and construction and arrangement of the ship."

Q. You say The Texas Company does not comply with the regulations of the Department of Commerce?

A. I believe there was a complaint filed on the SS "Washington" with the steamboat inspectors.

Q. Who filed the complaint?

A. Delegates on the ship.

Q. How about the SS "Nevada"?

A. I don't believe there was any complaint filed.

(Testimony of J. Gordon Rosen.)

Q. How about the SS "California"?

A. None filed on her.

Q. You do not mean that on those two ships The Texas Company did not comply with the Department of Commerce regulations, do you?

A. I am just reading the Tanker Agreement.

[384]

Q. You didn't mention that on those two ships The Texas Company complied with the Department of Commerce regulations, did you, in this letter?

A. There would be no purpose in it.

Q. You state there are twenty conditions The Texas Company does not comply with?

Mr. Wright: Mr. Examiner, I object for the reason that the instrument speaks for itself.

Trial Examiner Myers: That would be true. It is offered for a limited reason, and that is the reason I am permitting him to go into it. You can't put a statement in for a specific thing, and then say it speaks for itself on all the other matters.

Q. (By Mr. Van Dusen) Proceed.

A. "In those outports where there are no regular longshoremen available, members of the crew may be allowed to drive winches for handling cargo, or handle cargo, and for such work they shall be paid, in addition to their regular monthly wage, the overtime rate. This section shall not be so construed as to be applicable to any work where longshoremen are not available due to labor trouble."

Q. You say The Texas Company does not have

(Testimony of J. Gordon Rosen.)

in effect conditions such as you have mentioned?

A. They have never given us those conditions in writing.

Q. You say in writing? [385]

A. Yes, sir, verbally or written either.

“When additional certified men are hired for temporary day work on board vessels in port to assist the regular members of the crew on the work ordinarily performed by them, the rate of pay shall be six dollars per eight hour day, with a minimum of one-half day’s pay in any one day.”

Q. And that has never been paid by The Texas Company? The Texas Company have never paid any such?

A. I don’t believe they have ever paid any such amount on our ships, to my knowledge.

Q. If they never put them on, how do you know about that? A. To my knowledge.

Q. All right.

A. “When members of the unlicensed personnel in the deck and engine department are required to work in addition to their regular watches because a vessel sails short handed, they shall be paid for the extra time at the overtime rate.”

Q. The Texas Company has never paid any such overtime?

A. On the “Washington” we sailed short handed in the engine department, and they were paid at a rate about half of that.

Q. Have they ever paid the full rate?

(Testimony of J. Gordon Rosen.)

A. Not under this provision.

Q. Have they ever paid an amount equal to that? A. They have a different working rule.

Q. Does the seamen get approximately the same thing? [386]

A. Not under The Texas Company working rules.

Q. All right.

A. "After one year of continuous service from April 1, 1938, every unlicensed member of the crew shall be entitled to an annual vacation of twenty-one days with pay."

Q. What vacation does The Texas Company seamen get? A. I believe they get seven days.

Q. With pay?

A. One week. This refers to twenty-one days.

"If an employee has six months continuous service, he may be granted a vacation of not more than ten days with pay, but such period will be deducted from the twenty-one days."

The Texas Company has no such provision. [387]

Q. Are these separate clauses you are reading?

A. These are provisions or clauses. They are clauses in different sections.

Q. Separately numbered, are they?

A. The sections are numbered, and the clauses are under those sections.

Q. You do not mean that each one is separately numbered; it is not a separate number for each clause you are reading?

(Testimony of J. Gordon Rosen.)

A. No. This section refers to each clause in that section.

“If after six months continuous service an employee is terminated for any reason he will be entitled to receive, in addition to his regular pay, one week’s pay as a vacation allowance at time of termination. No other cash allowance in lieu of vacations shall be made. Any employee discharged for cause has the right of appeal under the grievance procedure provided in Article I, Section 5.”

The Texas Company has no such provision.

“If an employee is terminated for any reason with less than six months continuous service no vacation pay will be allowed.”

Q. That is the same as the other, isn’t it? You wouldn’t call that something separate?

A. The overtime. “Overtime shall commence at the time any employee shall be called to report for work outside of his regular schedule, provided such member reports for duty within [387-A] fifteen minutes, otherwise overtime shall commence from the actual time such employee reports for duty; and such overtime shall continue until the employee is released.”

The Texas Company does not live up to this rule.

Q. What does The Texas Company do?

A. A half hour, instead of a full hour.

“Where overtime worked is less than one hour overtime for one full hour shall be paid. Where the overtime worked exceeds one hour the overtime

(Testimony of J. Gordon Rosen.)

work performed thereafter shall be paid for in one-half hour period, a fractional part of such period to count as one-half hour."

Q. That is part of your overtime?

A. Yes, a different section.

"When traveling in the course of employment from one vessel to another or from one port to another unlicensed personnel shall be paid regular wages while en route and shall be provided with necessary transportation, and subsistence at the rate of \$3.00 per day, except where subsistence is included with transportation. When traveling overnight, a berth shall be provided.

"When any employee is left at any port and when such employee would ordinarily be entitled to transportation under the law, the company shall forthwith provide transportation back to the port of signing on, and may utilize its own vessels for that purpose." [388]

Q. That is required by law, isn't it? A. No.

Q. Do you mean to say that any company can take a seaman from Port Arthur up to some east coast port, and not send him back?

A. The Texas Company has fired men in the northern ports and not paid their transportation back.

Q. Do you know that of your own knowledge?

A. I do.

Q. Would you mind giving the names?

A. George Prince.

(Testimony of J. Gordon Rosen.)

Q. What boat? A. SS "Washington".

Q. Any other? A. Earl Alverson.

Q. What boat?

A. I don't know which boat he was fired off of.

Q. About when was that?

A. Oh, some time ago.

Q. How long?

A. Approximately six months.

Q. How long was it when Prince was fired?

A. Prince was fired off the SS "Nevada", not the "Washington".

Q. When?

A. The last trip she made up north. [389]

Q. About when was that?

A. Ten days ago, approximately.

Q. Wait a minute. The circular was gotten out before then, wasn't it?

A. Not before Alverson was fired, no, sir.

Q. Before the other man?

A. Yes. There were others fired too.

Q. Name them.

A. I don't remember them at this particular time.

Q. You don't remember their names?

A. Not particularly now. They just came up to me and related the circumstances, that they got fired.

Q. All right.

A. Traveling in the course of employment from one vessel to another, I read that.

(Testimony of J. Gordon Rosen.)

Q. Yes.

A. "The following items shall be supplied to the unlicensed personnel; (1) A suitable number of clean blankets; (2) white sheets and pillow cases, which shall be changed weekly; (3) face and bath towels, which shall be changed twice weekly."

We had a lot of discussion on the "Washington" about that.

Q. Does The Texas Company give that?

A. If you are strong enough organized to get it, yes.

Q. Does The Texas Company give it on any of its ships? [390]

A. I believe they have granted that request.

Trial Examiner Myers: You mean they try to do it? A. They try to do it, yes.

Q. (By Mr. Van Dusen) All right.

A. "All quarters and mess rooms shall be adequately ventilated and a sufficient number of fans to secure such ventilation shall be installed."

Q. What about that?

A. Well, on the "Nevada" and the "Washington" they were very hot, extremely hot in the summer time.

Trial Examiner Myers: What was hot?

A. The mess room.

Q. (By Mr. Van Dusen) You mean these conditions would remedy that?

A. They would remedy it, yes, if ventilation was provided for.

(Testimony of J. Gordon Rosen.)

Q. Did you bring it to the attention of the captain?

A. Yes, we brought it to the attention of the captain.

Q. How about the "California"?

A. No, not on the "California".

Q. All right.

A. "A sufficient number of lockers shall be installed so that each employee shall have one full length locker with sufficient space to stow a reasonable amount of gear and personal effects." [391]

Q. What about that?

A. On the "Washington" there were six men in one room, and it was very crowded in there, and the locker provided for was very small.

Q. How about the "Nevada"?

A. The lockers were sufficient on there.

Q. The "California"? A. Sufficient.

"All quarters are to be kept free from vermin in so far as possible."

Q. They did as much of a job about that as any company, didn't they?

A. No. The Gulf Company has a man coming around, and they fumigate or spray a certain compound on the decks and under the lockers and in the mess rooms, and so forth, for vermin. The Texas Company, I had never seen that done.

Q. Does the union require that?

A. They require some such provision made.

Trial Examiner Myers: Was there any vermin

(Testimony of J. Gordon Rosen.)

on the boat you were on?

A. Cockroaches on there, yes, sir.

Q. (By Mr. Van Dusen) Did you find any on the "Nevada"? A. Yes.

Q. "California"? A. Yes. [392]

Q. Find any on the Gulf boat?

A. Not many, no, sir.

Q. Nothing like the Texas? A. No.

Q. Vermin don't like the Gulf boats?

A. No. A man came around every trip.

Q. You didn't need that if there were no cockroaches on there.

A. They came round just the same.

"A refrigerator shall be furnished for night lunches for the use of the unlicensed personnel. Such refrigerators, if not electric, shall be adequately supplied with ice for such purpose."

No provision was made on any of The Texas Company ships for that.

Q. On those three ships? A. No, sir.

Q. You mean they didn't have any night lunch?

A. No, no refrigerator.

Trial Examiner Myers: What did you get?

A. We got a night lunch.

Q. (By Mr. Van Dusen) Was it a good lunch?

A. It was put out in the hot weather, and it became very unappetizing in two or three hours.

Q. They didn't have such good cooks, the Texas Company? [393] A. The cooks were all right.

Q. The food wasn't good?

(Testimony of J. Gordon Rosen.)

A. No, I don't think it was.

Q. But you still like The Texas Company ships?

A. That is not the question.

“When board and room are not furnished, unlicensed members of the crew shall receive the following allowance; (a) In lieu of breakfast, 60 cents; (b) In lieu of dinner, 75 cents; (c) In lieu of supper, 75 cents; (d) In lieu of quarters, \$1.25 per night.”

Q. Did The Texas Company do that?

A. No provision in the working rules.

Q. On any Texas Company ship?

A. Not that I know of, not this scale.

Q. You could eat free on The Texas Company ship when it was in port, couldn't you?

A. In port?

Q. Yes.

A. Yes, if I was employed on that ship. This refers to when ship goes into drydock and they are repairing quarters, and the crew has to go ashore.

Q. There are times when it is in drydock when they can eat on board?

A. Unless they are repairing the crew's quarters. That is the provision for that. [394]

“The company agrees that if and when the union is certified as having a majority of the unlicensed personnel aboard company vessels and during the period that this agreement is in effect members of the union shall be given preference of employment at all times if said members are satisfactory to the

(Testimony of J. Gordon Rosen.)

company to fill the respective positions; provided however that this section shall not be construed to require the discharge of any employee who may not desire to join the union, nor shall it apply to re-shipment of former employees and particularly employees who have been absent on account of illness, accidents, vacations or leaves of absence. To protect service rights, the company may transfer unlicensed personnel in its employ from one vessel to another or from one port to another."

The Texas Company does not agree to that.

Wage schedule, unlicensed personnel. [395]

Trial Examiner Myers: Is it the same schedule?

A. No, it is not.

Q. (By Mr. Van Dusen) In certain stations doesn't The Texas Company pay more than those rates, in respect to certain of the unlicensed personnel? A. I don't believe they do.

Q. Are you sure?

A. Not on any ship I was on.

Q. Doesn't The Texas Company pay as well as any of the companies signing those agreements?

A. They do in most instances.

Q. All right.

A. I am pointing out two instances where we had a discussion on the "Washington".

Q. But don't they comply with that?

A. Generally.

Q. But specifically, not always?

A. Not specifically.

(Testimony of J. Gordon Rosen.)

Q. All right, tell us?

A. Well, on the "Washington" the water tender and fireman was getting less money than the scale, which was \$90.00, and they notified us about it. And the steward's department, the galley man was getting less money than the union scale.

Q. But certain of the unlicensed personnel gets more than the rates provided there, isn't that so?
[396]

A. I don't believe any of them notified me to that effect.

Q. You don't know of any?

A. No, I don't know of any getting more.

Q. You didn't check that? A. No.

Trial Examiner Myers: What about the A. B.'s?

A. The A. B. scale is \$85.00 a month, the same as The Texas Company. The hours of work, day workers:

"The hours of work for day workers shall be eight hours per day week days between 8:00 a. m. and 5:00 p. m., with an hour off for lunch, and from 8:00 a. m. to 12:00 noon on Saturdays."

We had a discussion on the "Washington" about that; turned to on day work after 5:00 o'clock, and we didn't receive any overtime.

Q. That is a specific instance. How about generally? A. Generally that is the rule.

Q. Generally they met that rule? A. Yes.

"At sea and in all open harbors or road sheds the crew shall stand regular watches as required by the

(Testimony of J. Gordon Rosen.)

master, but no unnecessary work shall be performed on Saturday afternoons, Sundays or holidays, or between the hours of 5:00 p. m. and 6:00 a. m. However, no chipping nor scaling shall be required between 6:00 a. m. and 8:00 a. m.” [397]

We had an instance on the “Nevada” where after we had obtained overtime for this particular type of work the captain turned around and said, you are going to sooge and paint on Saturday afternoon and Sunday in order to receive this overtime.

Q. But didn’t they comply with that?

Trial Examiner Myers: That is the time he threatened to do it. Did he actually do it?

A. Yes, he actually did it, next trip.

Q. (By Mr. Van Dusen) Generally The Texas Company ships have complied with that? You are referring to a specific instance?

A. Yes, I am referring to a specific instance where we pointed it out, to our knowledge.

Q. You have a specific instance. You have specific instances in cases when they have signed agreements, don’t you? A. That is true.

Q. And you have to make a complaint through the deck delegate? A. Yes, that is true.

Q. The Texas Company complies just as much as most of them with signed agreements like that?

Mr. Wright: I object because it calls for a conclusion.

Trial Examiner Myers: Overruled.

A. I couldn’t say they will comply with that,

(Testimony of J. Gordon Rosen.)

because we bring this up to them. [398]

Q. (By Mr. Van Dusen) I say, except for specific instances, they comply?

A. When we bring any of those up on a specific instance, then is when we have the refusal.

Q. Well, you have the same trouble where they sign the Tanker Agreement?

A. We have the machinery to arbitrate and settle under the Agreement, but not in The Texas Company.

Q. But you have already referred to——

Trial Examiner Myers: Let's proceed with the next one.

Q. (By Mr. Van Dusen) Proceed.

A. "The duties of the quartermaster, when carried, at sea shall be to steer the vessel when the vessel is not fitted with automatic steering gear. When the vessel is fitted with automatic steering gear, he may assist in the maintenance of the wheel house and bridge deck. In ports he shall stand the gangway watch and assist the senior officer in charge."

We had quite a discussion on the "Washington".

Q. That is a specific instance? A. Yes, sir.

Q. Not a general condition?

A. I don't know whether it is general or not.

Q. You don't know whether it is or not?

A. No, sir; not to my knowledge.

"Pumpmen at sea: The hours of work for pumpmen shall be [399] from 8:00 a. m. to 12:00 noon; from 1:00 p. m. to 5:00 p. m. week days, and from

(Testimony of J. Gordon Rosen.)

8:00 a. m. to 12:00 noon Saturdays. For all work performed in excess of these hours he shall be paid at the regular overtime rate. Pumpmen's duties shall consist of handling fuel oil, ballast, cargo and tank cleaning equipment and all work necessary for the maintenance and operation of cargo pump auxiliaries, general cargo lines and all deck machinery. He shall not be required to chip paint, scale paint, polish brass, or do any work that is not considered maintenance for the machinery under his care. He shall not be required to make heavy installations where his work is customarily done by shore gangs. This, however, shall not be construed to apply to refuels and replacements of worn out equipment."

On the "Washington" we had an instance where the pumpmen went down in the tanks and repaired equipment, work ordinarily done by the shore gang, and we tried to get overtime for it, and were refused.

Q. Except for specific instances, generally they comply with that, don't they?

A. This instance was what we were pointing out, referring to.

Q. But that was a specific instance, and not general?

A. Specific and general instances.

Q. Show me where it says that? [400]

Mr. Wright: I would like to object to this. I believe it is a matter of construction for the Board

(Testimony of J. Gordon Rosen.)

and the Examiner. We might quibble for days over this.

Trial Examiner Myers: Overruled.

A. And right here: "The Texas Company promises the best." Is that right?

Q. (By Mr. Van Dusen) No, we are talking about the provisions of this agreement which you say The Texas Company does not comply with?

A. Yes.

Q. I am asking you where that is?

A. We just picked it out.

Q. Do you see anything about specific instances there?

A. This is just a general statement.

Q. Just a general statement?

A. Yes, sir.

"Pumpmen in port: At the discharge port, the first pumpmen's hours are to begin with the instructions to start discharging cargo or with the instructions to stand by to discharge cargo; such time to be continuous without deducting time for meals if such time is twenty minutes or less. If carried, the second pumpman's eight hours are to begin when he relieves the first pumpman. Each pumpman is to work eight hours in each twenty-four hours, and any additional time worked shall be considered overtime." [401]

This same instance occurred on the "Washington".

(Testimony of J. Gordon Rosen.)

Q. It is a specific instance you have in mind?

A. Yes, sir.

Q. Generally it does not apply?

A. I am not so familiar with the engine department as I am with the deck.

Q. You are not quite sure The Texas Company does not comply generally with it?

A. The others who assisted me in drawing up the letter spoke of general conditions.

“Oilers in port: Oilers in port on reciprocating, turbine and motor vessels if on watch at anchor or at the dock, provided they are not required to tend water, shall assist in making repairs between the hours of 6:00 a. m. and 5:00 p. m. No work outside of the routine standing of the anchor watch shall be required of the oilers between the hours of 5:00 p. m. to 6:00 a. m.”

Q. Again you are referring to specific instances?

A. Specific and general.

“When in port and watches broken, their hours shall be those of day workers, and shall assist with the repairs in engine department as directed by the engineer in charge.”

Q. What about that?

A. There was some discussion on that on the “Washington”. I just don’t remember what the discussion was. [402]

Q. You wouldn’t want to include that would you if you don’t remember what the discussion was?

(Testimony of J. Gordon Rosen.)

A. As I stated before, this was brought to my attention as general conditions.

Q. You personally would not want to include that?

Trial Examiner Myers: He says he doesn't remember it.

A. I don't remember exactly everything that was brought to my attention at the time the letter was drafted.

Q. You spent a lot of time on this?

A. Not an awful lot, no.

Q. Didn't you think it was very important, on a thing like this?

Mr. Wright: I object for the reason that it is argumentative.

Trial Examiner Myers: Sustained.

Q. (By Mr. Van Dusen) Please continue.

A. "Firemen at sea: On watch they shall tend the fires, clean burners, fuel oil strainers and keep their stations clean. They are not to go above the first grating, behind the boilers on shipside or on shipside abreast the boilers or below the floor plates for any cleaning or painting except to clean loose oil resulting from their work. Firemen on watch shall not be required to ship these aforementioned places. They are not to tend water unless the checks and gauges are in the fire room in which case they may be required to tend [403] water and shall be rated as fireman-water tender. For vessels fitted with more than three scotch boilers and where fire-

(Testimony of J. Gordon Rosen.)

men are required to tend water, they shall not be required to clean any station with the exception of the floor plates.

“Firemen shall assist with the blowing of tubes where vessel is equipped with mechanical tube blowing apparatus. On vessels not so equipped and where tubes are blown by hand by opening uptake doors and using hand lance, the firemen assisting shall be paid the tank cleaning rates for such time as required for this duty.”

Q. Again, that is specific.

A. Specific and general. [404]

Q. And not general conditions?

A. “Wipers, at sea and in port, shall be required to do the general cleaning and upkeep in the engine department spaces and assist in repair work as directed by the engineer in charge. When cleaning fuel oil and domestic fresh water tanks they shall receive the regular tank cleaning rate. Wipers shall also keep the wipers’ and firemen’s toilet, washrooms and quarters clean on ship’s time.”

Q. That is a specific instance?

A. To my knowledge.

“Stewards’ Department Working Rules. The hours of the stewards’ department shall be eight hours each day in a spread between 6:15 a. m. and 6:15 p. m., except for the utility man. No overtime shall be paid for the preparation and serving of

(Testimony of J. Gordon Rosen.)

regular meals and cleaning of quarters, galley, and messrooms within hours specified."

Q. What about that?

A. I think that rule is not applied in The Texas Company.

Q. Of your own personal knowledge, do you know?

A. I have seen no such provision in The Texas Company rules.

Q. Do you know whether on their ships that is not in effect? A. On the ships——

Q. On the ship you were on, of your own knowledge? A. Just on the ship I was on.

"Normal manning scale of steward's department shall be [405] as follows: Number of crew excluding stewards' department, 23 to 28, inclusive, manning scale stewards' department, 6; number of crew excluding stewards' department, 29 to 36, inclusive, manning scale stewards' department, 7."

I don't believe there is any such provision in any of The Texas Company working rules.

Q. Do you know, of your own knowledge?

A. I have never seen any.

Q. How about in practice?

A. In practice, it is my belief that The Texas Company is short handed in the stewards' department.

Q. On the ships you were on. How about the "California"? A. Even on the "California".

Q. "Nevada"? A. On the "Nevada".

(Testimony of J. Gordon Rosen.)

Q. "Washington"?

A. On the "Washington".

Q. You don't know about other ships of your own knowledge?

A. Not of my own knowledge; just what the others told me.

"Members of the Stewards' Department shall not be required to prepare and serve other than the three regular meals and prepare regular night lunches for the watches. If, on the orders of the master or commanding officer, lunches are served in addition to the three regular meals already provided for, one hour's overtime shall be paid to each man [406] actually engaged in the preparing and serving of such lunches, provided, however, that where meals are served to longshoremen and Panama Canal laborers on board any vessels, the sum of thirty cents for each person served shall be equally distributed to those actually engaged in this work, in lieu of overtime."

Q. How about that?

A. That is not in The Texas Company provisions.

Q. Is it in practice?

A. I don't believe it is.

Q. How about the three ships you were on?

A. On the three ships, it was not.

Q. How about other ships?

A. On the other ships, I don't know.

(Testimony of J. Gordon Rosen.)

“No member of the Stewards’ Department shall be required to serve coffee or meals in the engine room, nor shall they be required to enter the engine room at any time. Upon order of the Master they may be required to serve coffee or meals on the bridge.”

I don’t believe there is any such provision in The Texas Company working rules.

Q. How about in practice?

A. In practice, that is in the Stewards’ Department.

Q. You don’t know what has been done in practice? A. Not on that section. [407]

“When members of the Stewards’ Department are required to stow stores away requiring more than fifteen minutes they shall be paid overtime in addition to their regular wages at the overtime rate. Members of the Stewards’ Department shall not be required to carry stores or linens from shore to vessel or from vessel to shore.”

There is no such provision on the three ships of The Texas Company.

Q. How about in practice?

A. In practice, they are not paid overtime for this work.

Q. The other ships, you know nothing about?

A. The other ships, I do not.

“Members of the Stewards’ Department shall not be required to do chipping, scraping or painting. However, the utility man may be required to “touch

(Testimony of J. Gordon Rosen.)

up" paint when necessary."

On these three ships, I have seen the mess boy paint.

Q. A specific instance?

A. On the "Washington".

Q. You are referring to specific instances, and not to general conditions?

A. Only of my own knowledge in this case.

Q. You are not referring to general conditions; just specific instances?

A. Instances brought to my attention, yes, sir, that is [408] about all.

Q. Now of your own knowledge, you are only speaking for the three ships you were on, is that correct, of your own knowledge?

A. Yes, of my own knowledge, yes, sir.

Q. And The Texas Company has 28 ships?

A. That is right.

Q. So this statement, so far as you yourself know, does not apply to those other ships?

A. I think that letter was sent out as from the crew of the SS "Washington".

Q. I say, so far as you yourself know, so far as you yourself know about the other ships, the other 25 ships——

A. Only what people that had been on the other ships told me. [409]

Q. But you still don't know?

A. Of my own knowledge, I have never been on the ship, no.

(Testimony of J. Gordon Rosen.)

Q. And you yourself didn't check those statements personally, those conditions personally?

A. Those conditions?

Q. On the other ships.

Trial Examiner Myers: He has never been on the other ships.

Mr. Van Dusen: All right.

Q. Now you said: "After long wrangles with the captains and heads of the departments the friction and irritation has produced enough heat and ill feeling that the port officials are forced to step in again." What did you mean by that?

Mr. Wright: Mr. Examiner, if this line of questioning has any relevancy at all its relevancy is with respect to the credibility of this witness. For approximately one hour Mr. Van Dusen has gone into the credibility of this witness, and I believe that is certainly ample time for even Mr. Van Dusen to decide the credibility of this man, and I therefore object to any further questioning along this line.

Trial Examiner Myers: Overruled.

Mr. Van Dusen: Will you read that question, please?

(Question read.)

Q. What did you refer to there? [410]

A. Referring to the instance on the "Nevada" and the "Washington".

Q. What port officials stepped in, and under what circumstances?

(Testimony of J. Gordon Rosen.)

A. On the "Nevada" we had a discussion—
Trial Examiner Myers: What man?

A. First, we had a discussion with the mate, and then with the captain on the ship, Swanson.

Q. (By Mr. Van Dusen) What port official?

A. Mr. Hand.

Q. You are referring to a Texas Company official.
A. Yes.

Q. Not an outside official? A. No, sir.

Mr. Williams: Mr. Examiner, we worked yesterday until a quarter to one. I suggest that we have an adjournment now. I think we are practically through with this witness. This is a good time to adjourn.

Trial Examiner Myers: You mean you want to adjourn now for lunch?

Mr. Williams: That is what I would suggest.

Trial Examiner Myers: Have you any objection to adjourning for lunch now?

Mr. Martin: Only that if we can finish with this witness it will release him. [411]

Mr. Van Dusen: Judge Williams thinks he might have a question or two to suggest to me.

Trial Examiner Myers: We will adjourn now for lunch, and get back here at 1:00 o'clock. Does that suit you?

Mr. Williams: I think 1:30 would be better.

Trial Examiner Myers: All right, 1:15.

(Thereupon, a recess was taken until 1:15 o'clock p. m.) [412]

(Testimony of J. Gordon Rosen.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:15 o'clock p. m.)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Van Dusen: Are you ready, Mr. Martin?

Mr. Martin: Yes, I am ready. Thank you.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Mr. Van Dusen: Mr. Examiner, I have here a certified copy of the shipping articles covering the trip of the SS "Nevada" to Spain, which is a foreign trip, and they are signed in the presence of the U. S. Commissioner. I would like to ask Mr. Martin if he will accept these. Otherwise I will have to subpoena the Commissioner and then have Mr. Rosen identify his signature.

(Discussion off the record.)

Mr. Martin: Let the record show that counsel for the Board is willing to accept these shipping articles for what Mr. Van Dusen believes them to be and states to me personally that they are.

Mr. Van Dusen: Well, will you also state that there is a certification on there?

Mr. Martin: On page 5—and the pages are not numbered [413] —there is what purports to be

(Testimony of J. Gordon Rosen.)

the signature of a deputy collector with a collector's seal and the stamp, marked "United States Customs Service, Port of Port Arthur, Texas."

Mr. Van Dusen: Mr. Examiner, may I put it this way: I am offering a copy of shipping articles for the SS "Nevada" bearing date of register January 9, 1938, covering a trip for the SS "Nevada" from the Port of Port Arthur, Texas, to one or more ports in the continent of Europe in which the name of Gordon Rosen is listed and which bears a certificate of the deputy collector with the seal of such collector to the effect that this copy is a true copy of the filed copy of original on file in the office of that collector of the Port of Port Arthur, Texas. I am asking Mr. Martin to accept this as the shipping articles covering the trip on the SS "Nevada" which Mr. Rosen took on or about January 9, 1938, in lieu of the original.

(Discussion off the record.)

Mr. Van Dusen: I will have to withdraw that request.

Mr. Examiner, I am finished with Mr. Rosen except that there are two shipping articles referred to by Mr. Rosen, of which I shall inquire of him regarding certain things. I don't think I need to recall him to identify his signatures. I can do that through Mr. Martin. The other point is perhaps in connection with the telegrams which Mr. Wright is producing. Now if Mr. Rosen will be available

(Testimony of J. Gordon Rosen.)

during the course of the [414] hearing I can call him just for those specific purposes.

Trial Examiner Myers: Mr. Martin, will you produce Mr. Rosen at some later date if he is wanted by Mr. Van Dusen?

Mr. Martin: Yes, sir. We are willing to do that.

Mr. Van Dusen: I am finished with Mr. Rosen.

Trial Examiner Myers: All right. Is there any redirect examination?

Mr. Martin: There will be a short series of questions, Mr. Examiner.

Trial Examiner Myers: All right.

Redirect Examination

Q. (By Mr. Martin) Mr. Rosen, I believe you testified on cross examination that the usual pay off place for voyages on Texas Company ships was Port Arthur, Texas, is that correct?

A. That is the usual paying off port.

Q. Do some men get off at other ports however?

A. Yes, sir, they do.

Q. In the middle of a trip?

A. In the middle of a trip.

Q. And to your knowledge some men have been discharged in the middle of a trip at other ports?

A. Yes, sir, to my knowledge they have.

Q. You testified on cross examination, I believe, that when [415] you shipped on the SS "Washington" through Dave of the Seamen's Church Insti-

(Testimony of J. Gordon Rosen.)

tute you didn't tell Dave that you were a member of the National Maritime Union?

A. No, sir, I didn't.

Q. Now prior to that time had you told Dave that you were a member of the National Maritime Union or conducted yourself in his presence in such a manner that he could know that you were a member of the National Maritime Union?

Mr. Williams: Mr. Examiner, that is an exceedingly indefinite way of acquiring knowledge and I must register objection to it.

Trial Examiner Myers: Will you read that question again, Mr. Reporter?

(The last question was read.)

A. The only time that I can recall——

Trial Examiner Myers: Wait a minute. Wait a minute.

Mr. Williams: I have no objection to the first part of the question.

Trial Examiner Myers: Will you reframe that question. It is a little awkward.

Mr. Martin: Yes, I will do that.

Q. (By Mr. Martin) Mr. Rosen, prior to that time had you told Dave you were a member of the National Maritime Union?

A. No, I never told him.

Q. Prior to this time had you acted in front of him or in [416] his presence in such a manner that he could not doubt that you were a member of the National Maritime Union?

(Testimony of J. Gordon Rosen.)

Mr. Williams: I have objection to that on the ground that it is entirely too indefinite. If he wishes to ask the witness what he did and what he said we have no objection to that.

Trial Examiner Myers: I sustain the objection.

Did you have any conversations with Dave regarding unionism?

A. No, I never did mention the subject of unionism to this man known as Dave.

Trial Examiner Myers: Did you tell him at any time that you had registered at the union headquarters?

A. I don't believe that I ever did.

Trial Examiner Myers: Have you any reason to believe that Dave knew that you were a member of the union?

A. Yes, sir, I do believe he knows that I am a member of the union, because when I left the SS "California" and I went on the SS "Gulfbelle" and the SS "Gulfgem" and I left the ship just before Christmas last year, Dave wanted to see my discharges before he would register me and he knows that the Gulf ships are N. M. U. ships; were at that time; and I showed him my discharges from the Gulf Company.

Mr. Van Dusen: Well, I move to strike it out as not responsive. The discharge slip would be the best evidence of [417] that, as to whether it shows that he is an N. M. U. man.

Trial Examiner Myers: Motion denied.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Exception.

Q. (By Mr. Martin) Mr. Rosen, does the union allow you to call any company and ask for a job shipping on their line?

A. The union does allow us to do that.

Q. It does? A. Yes, sir.

Q. Is it customary for union men to do that?

A. Not—I will take that back. Some lines are considered unfair by the union; that is, referred to as scab lines and so forth; and the union does not consider their men to go aboard their ships if they have picket lines surrounding the ships of any shape or description.

Q. Mr. Rosen, is the National Maritime Union in favor of one individual sailor going to the officers of a company, like The Texas Company or the Gulf Company or any of the others, and on his own behalf requesting a job on one of their ships?

Mr. Williams: I wish to object to that because it doesn't make any difference whether they did or did not. If they did it would be denial of the constitutional rights of an American citizen to approach anybody and ask for work.

Trial Examiner Myers: Will you read the question again?

(The last question was read.) [418]

Mr. Williams: I wish to level the further objection to it that the Examiner has already sustained objections with regards to instructions that might be given to these men by their branch union at

(Testimony of J. Gordon Rosen.)

Port Arthur or anywhere else. He has tried to bring out as to what instructions he had and the objection was leveled to it and sustained. This question of course is asking this man what the union instructs him to do in cases of that kind.

Trial Examiner Myers: I will sustain the objection.

Mr. Wright: Mr. Examiner, you will recall that evidence was produced on cross examination——

Trial Examiner Myers: The evidence was introduced on cross examination of what these people did; not what they were instructed to do. That is the dividing line.

Q. (By Mr. Martin) Mr. Rosen, to your knowledge do sailors who are ashore and unemployed take themselves to company offices and request jobs; I mean members of the N. M. U.?

A. One of the duties of a member of the N. M. U. is to try to obtain rotary shipping through the union hall. Therefore members that do go out individually and solicit jobs are not considered to be aggressive union men.

Mr. Williams: Your Honor, the answer was not responsive to the question. I move that it be stricken.

Trial Examiner Myers: I do not know whether you are making an objection or a statement. [419]

Mr. Williams: I will withdraw it.

Q. (By Mr. Martin) And is that the reason, Mr. Rosen, that you did not try to get a job while

(Testimony of J. Gordon Rosen.)

you have been ashore since July, 1938, by that means?

A. That is one of the reasons, yes, sir.

Q. Mr. Rosen, does the same hold true with respect to trying to get a job on the docks; walking along the docks?

A. Yes, we don't encourage shipping off the docks.

Q. And boarding houses?

A. And boarding houses.

Q. And is that the reason why you didn't use those avenues of trying to get a job?

A. That is one of the reasons, yes.

Q. Now, Mr. Rosen, you testified, I believe, on both direct and cross examinations that after you had talked with the captain of the "Nevada" at Bilboa with respect to obtaining shore leave you were in fact granted shore leave. Do you attribute the fact that you were granted shore leave following that request solely to the fact that you made the request or also to the fact that between the time that you made the request and the time that word came that you had been given the leave that the port authorities at Bilboa sent word to the captain that it would be satisfactory for the crew to go ashore?

A. That is a long question. I would like to have that [420] question read.

Mr. Martin: Will you read the question, Mr. Reporter?

(The last question was read.)

(Testimony of J. Gordon Rosen.)

Mr. Williams: Now we will level objection to that because it calls purely for a conclusion of the witness. I remember the testimony exactly——

Trial Examiner Myers: I didn't hear you, Mr. Williams.

Mr. Martin: Mr. Examiner, I withdraw the question.

Trial Examiner Myers: All right. The question is withdrawn.

Q. (By Mr. Martin) Mr. Rosen, I believe you testified that word came back to the fore-castle that you could go ashore at Bilboa? A. Yes, sir.

Q. Who brought that word?

A. Whoever was on watch notified some of the other sailors and they notified everybody else; one of the quartermasters.

Q. Do you remember specifically how you learned that you could go on shore leave?

A. Some of the other sailors told me that we were allowed shore leave and to go up and get a draw.

Q. Did you talk with the captain further about this matter in Bilboa? A. Not in Bilboa.

Q. When you were talking with him in Pasjes on the same [421] subject did you ask him how come you had had shore leave at Bilboa?

A. I don't remember the exact discussion. The substance of it was that the captain said that one of the men had been drunk in Bilboa and that was the reason we were not allowed shore leave here.

(Testimony of J. Gordon Rosen.)

I said, "I don't remember anybody being drunk. Didn't hear of anybody being drunk in Bilboa."

Q. Do you believe that the crew would have been granted shore leave at Bilboa had you not made the request?

Mr. Pipkin: I object to the question because it calls for a conclusion.

Mr. Williams: The testimony on this subject was this: The crew wanted shore leave at Bilboa; the master said, "I can't give it to you because the military authorities——

Trial Examiner Myers: Not at Bilboa.

Mr. Williams: At Bilboa.

Mr. Martin: At Pasjes.

Trial Examiner Myers: I don't think that is the testimony.

Mr. Williams: I think that situation also obtained at Bilboa.

Trial Examiner Myers: Well, what happened now? Just to clear up that point what happened when you pulled in at Bilboa? Now tell us all what happened.

A. We were notified that we wouldn't have any shore leave. [422]

Trial Examiner Myers: Who notified you? One of the mates?

A. No. One of the members of the crew. Then we had a short meeting. I was elected with another sailor, W. W. Salas, to go up and talk to the captain, Captain Swanson. On the way up we met the

(Testimony of J. Gordon Rosen.)

second mate, Mr. Hopper. He wanted to know where we were going. We told him we were going up to the captain.

He said, "Well, you ought to have a committee elected from back aft to see about this shore leave."

I said, "That is what we are doing."

We went up and saw the captain and some Spanish official was in the room. I asked the captain about shore leave in Bilbao. He said, "I cannot give you shore leave until the military authorities grant it."

Trial Examiner Myers: Then what happened?

A. I then asked him if one of us would be allowed to go ashore to find out about this permission.

He said, "No."

Then we went back aft.

Trial Examiner Myers: Then what happened?

A. He sent word back aft while I was washing up. One of the sailors came in and told us we were allowed shore leave; to go up and get our money and we could go ashore.

Trial Examiner Myers: Do you know whether the captain [423] granted your request because you made it on behalf of the crew or because he himself got permission from the military authorities?

A. That I don't know positively.

Q. (By Mr. Martin) To clear the record, Mr. Rosen, will you tell us whether you repeatedly have tried to get jobs on Texas Company ships merely

(Testimony of J. Gordon Rosen.)

to be able to unionize or merely to be able to have employment or both?

Mr. Pipkin: I would like to interpose the objection that he is trying to impeach his own witness. He brought this out on direct testimony. He answered that question again on cross examination and now he is trying to get him to change his testimony.

Trial Examiner Myers: I will overrule the objection.

Mr. Pipkin: I make that in the form of an objection.

Trial Examiner Myers: I overrule it. Will you answer the question?

A. I would like to have that question read.

Trial Examiner Myers: Read the question.

(The last question was read.)

A. Both.

Q. (By Mr. Martin) Now, Mr. Rosen, to clear the record also, do you bear any personal unfriendly feeling toward any officers or any officials of The Texas Company, Marine Division or do you merely feel that in certain respects the company [424] has discriminated against and been unfriendly towards the union of which you are a member.

Mr. Van Dusen: Mr. Examiner, in the first place I object because he is leading his witness. In the second place, I object because he is asking for a conclusion. He uses words like "discriminate" and so on.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will sustain the objection. If you just divide your questions into three or four parts I believe he will be able to answer them, Mr. Martin.

Q. (By Mr. Rosen) Mr. Rosen, do you have any personal basis for any personal ill will toward the company? A. Not personal, no.

Q. Do you feel that you have any basis for an unfriendly feeling against the company?

A. Not against the company.

Q. Or any of its officers because of what you believe to be any unfair labor practice or practices against the union of which you are a member?

A. It would be pretty hard to remain neutral on a question like that.

Mr. Pipkin: I move that the answer be stricken as not being responsive.

Trial Examiner Myers: Well, he just said in so many words that he couldn't answer the question.

Mr. Pipkin: I withdraw the objection. [425]

Q. (By Mr. Martin) Is any feeling you have in the matter based upon what you believe to be the company's attitude towards and actions with respect to the National Maritime Union?

A. Yes, and it is more a feeling in respect with all union members.

Q. Do I understand that your feeling is based—

A. (Interrupting) In respect to all union members.

Q. And is it based on the company's actions in

(Testimony of J. Gordon Rosen.)

labor matters dealing with the union?

A. I don't think I got that whole question.

Mr. Martin: Will you read the question, Mr. Reporter?

(The last question was read.)

A. I think it is based on the actions of certain officials of the company in regard to——

Q. (Interrupting) In respect to labor matters?

A. With regard to labor matters.

Q. And the union? A. And the union.

Q. And with respect to labor matters that the union has brought up? A. Yes, sir.

Q. And that you have brought up?

A. In behalf of the union members, yes, sir.

Q. Mr. Rosen, you have testified on direct and cross [426] examination that the date upon which you left the SS "California" was September 19, 1937, is that correct?

A. On or about that date, yes, sir.

Q. Can you tell us at approximately what time the boat arrived at Port Arthur that day?

A. In the morning. Some time in the morning.

Q. Can you tell us approximately what time you were paid off from that ship?

A. After dinner. Some time after 1:00 o'clock.

Q. What time after 1:00 o'clock?

A. I don't remember the exact time.

Trial Examiner Myers: Some time in the afternoon?

A. Some time in the afternoon, yes, sir.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Some time after 1:00 o'clock?

A. Between 1:00 and 3:00. Some time between 1:00 and 3:00.

Q. Some time between 1:00 and 3:00 o'clock?

A. Yes.

Trial Examiner Myers: In the afternoon?

A. In the afternoon.

Q. (By Mr. Martin) And roughly, about what time did it dock?

A. The best of my recollection is that it docked in mid-morning.

Q. And you would say that is about what time?

A. Between 9:00 and 10:00. [427]

Q. Now about what time was it that the boatswain, Leslie Thompson, said to you the words that you have testified to on direct examination, which I believe to have been something like this, "Your money is waiting for you. You are discharged"?

A. He used the word "fired."

Q. What time was that?

A. Within a short time after the boat had docked.

Q. Before 11:00 o'clock?

A. Yes, it was before 11:00 o'clock.

Q. Before 12:00 o'clock?

A. Yes, before 12:00 o'clock.

Q. At least before 1:00 o'clock?

A. Before 1:00 o'clock.

(Testimony of J. Gordon Rosen.)

Q. Now did you testify that after this conversation with the boatswain you had a discussion with the mate on this subject?

A. No, sir, I didn't have a discussion with the mate until after dinner; after 1:00 o'clock.

Q. Until after dinner? A. Yes.

Q. At about what time did you have a discussion with the mate?

A. Roughly, between 1:00 and 3:00.

Q. Was it nearer 1:00 or nearer 3:00? [428]

A. I would say about closer to 2:00 o'clock.

Q. Will you tell us what happened and what was done at that time and what was said between you and the mate?

A. The mate had—he had notified me to come up and get my money and papers. I came up in his room. That was the second mate, Mr. Baldwin. He had some papers on his desk. He was writing on them. He says, "Here is your money."

I said, "Well, what is the reason why I am being fired?"

He said, "Reason? Well, you know we don't want no union agitating back there."

Q. Is that all?

A. I took my money and papers and left.

Q. Now do you remember whether the conversation took place before or after you received your money and your papers?

A. Before I received the money and the papers, yes.

(Testimony of J. Gordon Rosen.)

Q. I believe you testified on both direct and cross examination that the mate Baldwin was doing some writing at the time?

A. He was, yes, when I came in.

Q. And that while he was writing he was talking to you? A. Yes, sir.

Q. And then he paid you off? A. He did.

Q. Now is that the first discussion you had had with mate Baldwin about your being fired? [429]

A. That is the first discussion I had with the mate Baldwin about being fired, yes, sir.

Q. Had you had a discussion with any other mate or the captain prior to this time about being fired? A. No, sir, I didn't.

Q. But you had had a discussion several hours before with the boatswain, who Captain Roney described as a foreman? A. Yes, sir.

Q. Now in this conversation which you had with the boatswain Thompson, did he say as of what time you were fired?

A. He didn't mention as of what time. He just said, "You are fired."

Q. From that did you understand that you were fired as of that moment?

A. No, I understood I was to finish up until noon.

Q. Until noon? A. Yes.

Q. And did your shift end at noon?

A. Yes, mine did. [430]

Q. Did Mr. Thompson say anything about "You

(Testimony of J. Gordon Rosen.)

are discharged when you finish this shift at noon”?

A. I don't remember his exact words, but he did tell me to work up till noon.

Q. Did he say anything to the effect that “You are discharged as of the end of this trip”?

A. No, sir, he didn't say anything like that.

Q. You are very sure he didn't say anything like that? A. Yes, sir, I am.

Q. Now, in your conversation with the mate did the mate say as of what time you were fired?

A. You mean the second mate, Mr. Baldwin?

Q. Yes. A. No, he didn't specify.

Q. I understood you didn't talk to any other mate on the subject? A. No, I didn't.

Q. Or to the captain? A. No.

Q. He didn't specify? A. He didn't.

Q. He didn't say you were fired as of the end of this trip? A. No, sir.

Q. He didn't say you were fired as of noon when you finished your last shift? [431] A. No, sir.

Q. He didn't say you were fired as of the time Boatswain Thompson spoke to you and told you you were discharged? A. No, sir.

Q. Mr. Rosen, at the time you were paid off were there other members of the crew waiting to be paid off?

A. I didn't see any at the time I was paid off.

Q. Do you know whether other members of the crew had previously been paid off? A. Yes, sir.

Q. Some of them had?

(Testimony of J. Gordon Rosen.)

A. Yes, sir, James Blasingame and I am not so certain about Arthur Spencer. He had notified me he had been fired.

Q. Had all the crew been paid off when you were paid off?

I withdraw that question.

To your knowledge were all of the members of the crew drawing money that day?

A. Yes, sir, they were all drawing money.

Q. They were all drawing money? A. Yes.

Q. Now, had all of them finished drawing money when you drew yours or were there others waiting?

A. I am not certain about that point whether they were or not.

Q. Mr. Rosen, you have stayed in Port Arthur most, if not all [432] of the time since July 14, 1938? A. I have.

Q. Have you left it at all?

A. On one occasion I left and went to Beaumont.

Q. For how long a period? A. For six hours.

Q. Then you have been here the rest of the time? A. I have.

Q. During that period have you associated with a number of seamen ashore? A. Yes, sir.

Q. In your discussions with these men and other people in Port Arthur during that period have you generally understood that shipping was slow or fast? A. Very slow.

Q. Very slow? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. You mean it has been rather difficult to get a job during that period? A. That is right.

Q. So far as you knew?

A. So far as I knew, yes.

Q. Mr. Rosen, to clear the record did you have an illness at the time you lost your hair?

A. Well, it is quite a long story. [433]

Q. Well, I am sorry, but we have to go into it. Do it just as briefly as you can. First, Mr. Rosen, answer my question. Did you have an illness?

A. What type of illness?

Q. Were you in the hospital? A. I was.

Q. Were you in a number of hospitals?

A. I was.

Q. How long were you under doctor's care?

A. Two months in one hospital and a month in another hospital and a month in another hospital.

Q. It cost you a good deal of money?

A. Not in the Marine Hospitals, but I went to a private hospital.

Q. I believe you testified, Mr. Rosen, that a number of meetings of the crew were held during working hours. Can you tell me on what ships any such special meetings were held? Well, to clarify the record, Mr. Rosen, were any meetings held which were attended by men who were supposed to be working during that shift?

A. They attended brief special meetings.

Q. On what ships?

(Testimony of J. Gordon Rosen.)

A. The SS "Nevada" principally in an emergency.

Q. Any other ships?

A. The SS "California" only in one instance that I know of [434] and the SS "Washington", I will have to look at my notes to make sure. On the SS "Washington" I don't recollect any special meetings during working hours.

Q. Now, you say you remember one on the "California"? A. Yes.

Q. Do you remember how long that lasted?

A. About an hour. Approximately an hour before the whole thing was through, the whole discussion had finished.

Q. And on the "Nevada" how long did those meetings last? A. Not over five or ten minutes.

Q. Not over five or ten minutes? A. No, sir.

Trial Examiner Myers: Did any men attend those meetings who were supposed to be working?

A. Yes, sir, it was a general practice in a special meeting for those men to attend.

Q. You say those were emergency meetings?

A. They were.

Q. By whom were those meetings called?

A. Any member that had a grievance that he wished to have settled immediately.

Q. Who would call the meeting?

A. He would ask the delegates to call the meeting.

Q. The delegates would call the meeting?

(Testimony of J. Gordon Rosen.)

A. Yes, sir. [435]

Q. And if in the opinion of the delegate the matter was sufficiently an emergency then the delegate or delegates would call the meeting?

A. They would, yes, sir.

Mr. Williams: I must object to these leading questions. It has gone quite a long ways now I think. The questions are leading the witness with a string.

Trial Examiner Myers: Don't lead so much, Mr. Martin?

Do I understand that these meetings were called as, for instance, when the quartermaster was asked to do a certain job and he thought that job was not one for him to do? A. Yes, sir.

Trial Examiner Myers: Then he would report that to the delegate before he would go ahead with the work so that he wouldn't get in trouble with the mate if he was wrong?

A. Yes, sir, and when an emergency arose, if any member of the crew felt that he had a grievance that he wished to have settled immediately he asked the delegates to call a special meeting or try to settle the grievance——

Trial Examiner Myers: Well, he took the matter up with the delegate and then whatever the delegates decided to do was up to the delegate? Is that what you mean? A. Yes.

Q. (By Mr. Martin) Now, Mr. Rosen, on September 19, 1937, between the time that the "Cal-

(Testimony of J. Gordon Rosen.)

formia'' docked at Port Arthur [436] between 9:00 and 10:00 and when you were paid off by the mate, did you overhear any conversations between any officials of the ship and Blasingame or Spencer?

A. Not any I recall, no, sir.

Q. During that period or interval did you see the boatswain, any of the mates, or the captain standing talking with either Blasingame or Spencer?

A. I don't recall that either. [437]

Mr. Williams: Your Honor, we object to such a question as that. If he knows that something was said or done——

Trial Examiner Myers: Well you are complaining that he is leading him and he has to go around the other way now.

Mr. Martin: Your witness, Mr. Van Dusen.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Rosen, this Gulf discharge certificate which you showed to Dave over at the Seamen's Church Institute, there was nothing on that certificate to indicate that you were an N. M. U. member, was there?

A. Nothing except the fact that it was a Gulf certificate.

Q. I mean it was a Gulf ship? A. Yes.

Q. There was nothing on there to indicate that you were an N. M. U. member other than that?

A. It was understood that these Gulf ships were N. M. U. ships.

(Testimony of J. Gordon Rosen.)

Q. Please answer my question. There is nothing on the certificate to indicate that you were a member of the N. M. U.?

A. No, sir, there wasn't.

Q. Now you said that the Gulf Company had to get its seamen through N. M. U. Hall, didn't you?

A. At what time? Previous to the—— [438]

Q. No, no, since they have been under contract. During this period that Mr. Martin talked about did the Gulf Company have to get its men through the N. M. U. Hall?

A. I don't think that they were specifically tied down to getting their men through the N. M. U. Hall, all of them, but it was the common practice.

Trial Examiner Myers: But they had to have N. M. U. men?

A. I believe the contract called for N. M. U. men, yes, sir.

Q. (By Mr. Van Dusen) Well now, you say that they had to get N. M. U. men for their ships?

A. Yes, the men did have to belong to the N. M. U. They were given preference if they belonged to the N. M. U.

Q. Then there might be some men who weren't N. M. U. men?

A. No, sir, they wouldn't be rehired if they weren't N. M. U. men.

Q. Were you here the other day when Mr. Ames testified? Have you been here since Monday?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Didn't you hear Mr. Ames say that the Standard Tanker Agreement didn't require these companies to get their N. M. U. men from the N. M. U. Hall? Didn't you hear him testify to that?

A. I didn't hear Mr. Ames testify as such. [439]

Q. Did you hear him testify to that effect?

A. He testified something about the Tanker Agreement, yes, sir. There was quite a bit of discussion about that.

Q. You didn't hear what he said on that?

A. Not all of it.

Q. If he so testified, would you say he is incorrect?

Mr. Wright: Now wait a minute.

Trial Examiner Myers: Wait a minute, Mr. Van Dusen. I believe both you and the witness are in accord on that point. He says that the agreement does not make it obligatory on the Gulf people to call up the Union Hall for men if they need them.

Mr. Van Dusen: I thought he answered your question by saying——

Trial Examiner Myers: No. What I said was this: Is it necessary or obligatory on the part of the Gulf people to hire only N. M. U. men.

Mr. Van Dusen: And what was his answer?

Trial Examiner Myers: What was your answer to that question?

A. The question was whether the——

Mr. Van Dusen: (Interrupting) Whether the Gulf Company had to hire N. M. U. men.

(Testimony of J. Gordon Rosen.)

A. The N. M. U. men were given preference in employment.

Q. (By Mr. Van Dusen) But they didn't have to hire all [440] N. M. U. men?

Mr. Wright: Mr. Examiner, I suggest that calls for a legal conclusion of this witness.

Trial Examiner Myers: No, no, it does not. I would like to find out that point myself, because he testified before that the reason why this fellow Dave at the Seamen's Church Institute knew that he was a Union man is because he was discharged from one of the Gulf Company boats. Now, he says the Gulf people do not have to have an entire Union crew. Now if that is so, Dave does not necessarily have to know that he is a Union man.

What are the facts? That is what we want, Mr. Rosen.

A. The facts are that if a non-union man attempted to ship aboard any N. M. U. ship the company is perfectly aware of the fact that it would cause a great deal of feeling and rather than do that they ship N. M. U. men.

Trial Examiner Myers: Do you mean it is the policy of the company to hire N. M. U. men?

A. Yes, sir.

Trial Examiner Myers: But they don't have to do that under the contract?

A. Yes, sir, that is it.

Q. (By Mr. Van Dusen) You don't know of

(Testimony of J. Gordon Rosen.)

your own personal knowledge that Dave knows that?

Mr. Wright: I want to urge objection to that. I don't [441] mind anybody going into that, but I think the construction of that contract is a matter of law as to what the preference is, and irrespective of what this witness says it should not be binding on the Union or the Board or anybody else.

Mr. Van Dusen: We are talking about Dave's knowledge. You brought it out on redirect examination.

Trial Examiner Myers: Objection overruled.

Mr. Van Dusen: Read the question.

(The last question was read.)

Mr. Van Dusen: I will withdraw the question.

Q. (By Mr. Van Dusen) Did you ever tell Dave that the Gulf Company hired only N. M. U. men?

A. No, I didn't.

Q. Now you said on redirect examination that the reason why you didn't try to get a job from other companies that didn't have agreements with the N. M. U. was because unemployed N. M. U. sailors did not as a matter of practice go to those other companies, is that correct?

A. I said that was one of the reasons.

Q. All right. That is one of the reasons.

A. One of the reasons.

Q. That is one of the reasons you took that action, is that so?

A. That is one of the reasons, yes. [442]

(Testimony of J. Gordon Rosen.)

Q. Yet you did put yourself on The Texas Company list and The Texas Company is one of the companies not having an agreement with N. M. U., isn't that correct? A. Certainly.

Q. So in that respect you violated the policy of the N. M. U., did you not? A. No, I didn't.

Trial Examiner Myers: I think you misunderstood the question. As I understand it, Mr. Van Dusen, he didn't solicit a position from these other companies because it was more or less unethical.

[443]

Mr. Van Dusen: All right. I will ask him this:

Q. (By Mr. Van Dusen) You did solicit a job from The Texas Company, didn't you?

A. No, I didn't.

Q. Didn't you testify on direct examination that you called The Texas Company's office and tried to get a job?

A. Yes. No. I take that back. I talked to Captain Hand and asked him what he was going to do about my case.

Q. That is The Texas Company, isn't it?

A. Yes.

Q. Well, you did ask him about a job?

A. He told me he would look into my case and I asked him what he was going to do about it.

Q. You wanted a job, didn't you?

A. Yes, I wanted a job.

Q. And you did solicit The Texas Company for a job, didn't you? I say you did then solicit The

(Testimony of J. Gordon Rosen.)

Texas Company for a job?

A. Well, technically speaking——

Q. No. I mean as a matter of fact.

Mr. Martin: Let the witness answer. Go ahead Mr. Rosen.

Mr. Wright: Mr. Examiner, may I have the objection that it is argumentative and calling for a conclusion of the witness with respect to that question?

Mr. Van Dusen: All right, I will withdraw the question.

Q. (By Mr. Van Dusen) I will ask you whether it is a fact [444] on direct examination that these questions and answers were not asked and given by you——

Mr. Wright: Mr. Examiner, I object to this for the reason that it is already in the record and the record speaks for itself. If the record says he said it, he said it.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) “Question: Have you made any other attempt since July 14, 1938——

Trial Examiner Myers: Wait now, Mr. Van Dusen. You are accusing the witness of the fact that when he went to Captain Hand he applied for a job. He applied for reinstatement. Now, he didn't go there to The Texas Company fresh off the street as if he had never been employed there. He had just been discharged or fired from there and he went up

(Testimony of J. Gordon Rosen.)

to the captain and he said, "What about getting re-employment?"

Now, Mr. Martin might have and the witness might have used other words, but that is the effect of it.

Mr. Van Dusen: Well, I would rather rely on what he said.

Trial Examiner Myers: That has nothing to do with it. I think you ought to skip that.

Mr. Van Dusen: Well, on redirect they are trying to justify his not going to other companies for jobs and the reason offered is that the policy of the Union is not to permit N. M. U. members to go to companies that have not signed [445] agreements with the union.

Trial Examiner Myers: I understand, and I might be wrong, that when he was asked these questions you are about to read to him now, they were asked to find out whether he ever applied for re-employment. There was a whole series of questions and answers about what he did in order to get his job back. I believe if you will read the whole of the testimony at that spot you will find out that I am correct about it.

Mr. Van Dusen: I don't find anything here on that. There is a discussion as to how he got on the list of the Seamen's Church Institute and then he said he called Mr. Myers and there was no answer and then he said he called Mr. Hand and that was the conversation I started to read.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Well, if you insist on going ahead with it, you may go ahead.

Mr. Van Dusen: I think it is very important, Mr. Examiner.

Trial Examiner Myers: I don't want to cut off your examination. I am quite sure when he applied for a job at the Texas Company he applied for re-employment, but go ahead with it.

Q. (By Mr. Van Dusen) "Question: Have you made any other attempts since July 14, 1938, to get a job with The Texas Company, Marine Division?"

"Answer: Yes, sir. [446]"

"Question: What attempts?"

"Answer: I called up Captain Hand.

"Question: About when?"

"Answer: About July 16th.

"Question: Did you speak with Captain Hand personally?"

"Answer: Yes, sir, I did.

"Question: What was said in that conversation?"

"Answer: I said, 'Captain Hand, I was fired off the "Washington" and you said you would look into it.'

"He said, 'Yes'.

"I said, 'You know they have made no attempt to do anything about it.'

"He said, 'I don't know anything about it.'

(Testimony of J. Gordon Rosen.)

"I said, 'You know I was discriminated against.'

"He said, 'I never said anything like that.'

"I said, 'I filed the complaint with the Labor Board.'

"He said, 'That is in the hands of the New York office. They are over my head.'

"I said, 'How about getting a job again?'

"He said, 'I will look into it again,' and hung up."

Did those questions and answers take place on direct examination?

A. Practically as read.

Q. Now, you testified on redirect examination, Mr. Rosen, that you had feeling against The Texas Company because of [447] their attitude toward the N.M.U. in labor matters. When did you first have that feeling? When did that develop, that feeling toward The Texas Company?

A. This feeling was not toward The Texas Company.

Q. Well, then, toward the officials.

A. Well, it was impossible to stay neutral——

Q. (Interrupting) I mean when. When did you first reach that stage? When did you first get into that state of mind that you had ill feeling toward the officials of The Texas Company?

A. I don't have any ill feeling toward them.

Q. I thought that is what you said in answer to Mr. Martin's question?

(Testimony of J. Gordon Rosen.)

A. I said it was impossible to stay neutral on the question of my feelings toward them.

Q. Well, you don't have any too good feeling toward the officials?

A. No, I don't feel good toward them.

Q. No. Well, when did that first begin?

A. Well, I didn't set any definite date on it.

Q. Well, about when? Would you say after you left the "Washington" or after you left the "Nevada"?

A. Well, my feelings had changed a little, yes, after I left the "Nevada" toward The Texas Company.

Q. How about after you left the "California"? Did you [448] feel badly toward them after you left the "California"?

A. Not so bad. I expected that.

Q. You felt a little worse after the "Nevada" incident? A. Yes, sir.

Q. And after the "Washington" incident it was still worse? A. No it wasn't.

Q. What? A. I expected that.

Q. Then it was about the same as after the "Nevada"? After the "Washington" it was about the same as it was after you left the "Nevada"?

A. What do you mean?

Q. Your feeling toward the officials of The Texas Company.

A. You said I felt as bad as I could. I didn't

(Testimony of J. Gordon Rosen.)

feel especially bad toward the officials. I could see a change in their attitude, that is all.

Q. You didn't like it?

A. No, I didn't like it.

Q. You didn't like it to such an extent that you thought you ought to get evidence to build up a case against them, didn't you, isn't that so?

Mr. Wright: Mr. Examiner, I object to that. I object to it for many reasons, the most important of which is that I think it is highly improper. I am willing to stipulate with this gentleman that this man did go on the ship and [449] make notes, that he did keep the record on that when he came out, he came out expressly for the purpose of filing the charge.

Mr. Van Dusen: May I refer to some of Mr. Rosen's testimony to the effect that on several occasions he felt he ought to have witnesses, that he felt he ought to take notes in order to establish his position.

Mr. Wright: That is right.

Mr. Van Dusen: That is all I am asking him.

Trial Examiner Myers: I will overrule the objection.

Mr. Martin: Mr. Reporter, will you read the question please?

(The last question was read.)

A. My first feelings with this evidence, whatever you call it——

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Van Dusen) Please answer the question "yes" or "no", Mr. Rosen, to save time.

Trial Examiner Myers: Read the question please.

(The question was read.)

A. I felt that my rights had been violated under the Wagner Act.

Mr. Van Dusen: Will you please answer that "yes" or "no"?

Mr. Wright: Mr. Examiner, I object.

Trial Examiner Myers: I don't think it calls for a "yes" [450] or "no" answer.

Mr. Van Dusen: All right. Please answer it then.

Trial Examiner Myers: He did answer it.

Mr. Van Dusen: I didn't hear the answer. Will you read the answer, Mr. Reporter?

Mr. Martin: On behalf of the Board, I would like to object to the question.

Mr. Van Dusen: I want to hear the answer.

Mr. Martin: I would like to object to the question before the answer is read.

Trial Examiner Myers: The question was objected to and the objection overruled and the question answered.

Mr. Martin: The attorney for the Union objected, Mr. Examiner. Now, the attorney for the Board wishes to object to the question.

Trial Examiner Myers: I am sorry that you didn't get your objection in in time. I didn't know you wanted to object to it. It is all in now.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: May I have the answer.

(The last two answers were read.)

Q. (By Mr. Van Dusen) So that you decided when you talked, in the future, to the officers of the ship or with Mr. Hand you would take notes immediately after the conversation, is that right?

A. As soon as possible, yes, sir. [451]

Q. And that wherever possible you would take witnesses with you, is that right?

A. Yes, sir.

Trial Examiner Myers: Well, there is nothing wrong in that. Now, let's go on, will you please?

Mr. Van Dusen: He says he has ill feeling toward the company.

Trial Examiner Myers: Well, there is nothing wrong with him bringing a witness along. He doesn't need a lawyer to advise him to do that. Let's go on now.

Mr. Van Dusen: I know, but I just want to show what his feeling was.

Mr. Martin: Mr. Examiner, I should like——

Trial Examiner Myers: We have taken care of it. What would you like, Mr. Martin?

Mr. Martin: Well, on behalf of the Board, I would like to indicate that the fact that a man tried to prepare a good case under the Wagner Act does not necessarily indicate any ill feeling toward the company.

Trial Examiner Myers: Well, I think that we all feel the same way about it.

(Testimony of J. Gordon Rosen.)

Mr. Martin: It is simply a case of a man trying to exercise his rights.

Mr. Van Dusen: But your examination tries to bring out that he had no ill feeling. Now I am trying to show the opposite. [452]

Mr. Martin: I am suggesting, Mr. Van Dusen—
Trial Examiner Myers: Now, wait. We have had enough of that on the record.

Mr. Van Dusen: Just one more question, Mr. Examiner.

Q. (By Mr. Van Dusen) Mr. Rosen, you said that since you left the SS "Washington" it was difficult to get a job because a number of men were on the beach, is that right? A. That is right.

Q. Well, then, why didn't you solicit these other companies that had no agreements with the Union.

A. Well, I thought—one of the reasons was it is the duty of the members to try to get a rotary shipping list and I had been registered with The Texas Company and could see no reason for not going back there again.

Q. Well, if there is unemployment and it is hard to get a job, isn't that a reason for trying to get it in as many places as possible?

Trial Examiner Myers: Well, he explained that it was unethical for a union man to go down and try to get a job out of the union headquarters.

Mr. Van Dusen: I don't think he means to

(Testimony of J. Gordon Rosen.)

imply that the men should starve if there is a job available. All right. That is all I have.

Mr. Martin: That is all.

Trial Examiner Myers: You are excused. [453]

(Witness excused.)

Trial Examiner Myers: We will take a few minutes' recess.

(A short recess was taken.) [454]

Trial Examiner Myers: Are you ready?

Mr. Martin: Mr. Examiner, we are finished with Mr. Rosen, except that, with Mr. Van Dusen's permission, we might want to call him back for a few minutes at some later time during the hearing.

Trial Examiner Myers: Is that agreeable to you?

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: You are excused for the time being, Mr. Rosen, but hold yourself in readiness in case we need you. Next witness.

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

In Five Volumes

VOLUME II

Pages 495 to 997

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

DEC 10 1942

PAUL P. O'BRIEN,

United States
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Upon Petition to Review, and Request for Enforcement
of, Order of the National Labor Relations Board

GEORGE B. HART

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: Will you give your name and address to the reporter?

A. George B. Hart, 618½ Houston Avenue, Port Arthur.

Direct Examination

Q. (By Mr. Wright) Mr. Hart, were you on the steamship "Nevada" of The Texas Company on or about April 19, 1938? A. Yes, sir.

Q. In what capacity were you signed on?

A. Quartermaster.

Q. Did you on April 19, at about 7:30 a. m., overhear a part of a conversation had between Mr. Rosen, an able-bodied seaman, [455] and a seaman by the name of Leo Herman? A. Yes, sir.

Q. Will you say what part of the conversation you heard?

Mr. Van Dusen: Now, Mr. Examiner, we object on the grounds that the conversation is hearsay.

Trial Examiner Myers: You had better connect it up.

Mr. Wright: We will connect it up.

Trial Examiner Myers: I will take it subject to connection, and if it is not connected up I will entertain a motion to strike it out.

A. I came out of the mess hall, going out to relieve the other quartermaster, at 8:00 o'clock;

(Testimony of George B. Hart.)

and Rosen and Herman were talking in the passageway, and as I stopped by I heard Herman say to Rosen: "I have an I. S. U. book, and I don't give a damn who knows it." And I walked on down the passageway. There was some more conversation, but I don't remember just what it was. And I walked on out and relieved the other quartermaster.

Q. (By Mr. Wright) How long prior to April 19, had you been on the steamship "Nevada"?

A. I went on there that last night of February. My time started March 1.

Q. Up through April 19, had the able-bodied seaman, Leo Herman, been aboard the steamship "Nevada"?

A. No, sir. He just came on board the night before. [456]

Q. He came on board the eighteenth?

A. I suppose that was the time. It was the next morning I heard the conversation, and he came on that evening before.

Q. Mr. Hart, what are the nature of a quartermaster's duties on board a ship?

A. Well, he steers a tanker while at sea, and in port he assists the mate in pumping out and loading the ship, and stands gangway watch, and watches the lines.

Q. Now, on April 19, at about 8:00 o'clock in the morning was the ship at sea or at dock?

A. Alongside of the dock, down at the Island.

Q. Then your duties at 8:00 o'clock on April 19

(Testimony of George B. Hart.)

were the duties that customarily fall to a quartermaster while a ship is at dock?

A. Yes, sir.

Q. On this particular day, April 19, at 8:00 o'clock did you have an occasion to overhear a conversation that transpired between this new A. B., Leo Herman, and the chief mate on the vessel, Mr. Tranberg?

A. Yes, sir, I did.

Q. Will you relate that conversation?

A. Well, I had relieved the other quartermaster. We were standing by the bows. The pumpman, the first mate and myself were standing right under the fly bridge just aft of the amidships house, standing there by some valves, waiting for [457] the tank to load, until we shut off the valves. This Herman came out, and he said to the mate, he said they were in a squabble back aft about him being a union man, an I. S. U. man. And he said he wanted to know where he stood. And the mate told him that The Texas Company didn't make any distinction between N. M. U. and I. S. U. men, or whether he didn't belong to any union. He said, this Herman said: "Well, they are talking about setting her down." And the mate said: "If they want to set her down they can set their gear over on the bank. I don't give a damn whether you are an I. S. U. an N. M. U. or what you are."

Trial Examiner Myers: What does setting down mean?

(Testimony of George B. Hart.)

A. That was a term they use if they are going to have any trouble, like a sit-down strike, like they call a slang phrase, I believe. The mate turned around to me, Mr. Tranberg, and he said: "Hart, how about this? What is this all about?" And I told him all the men back aft who had been on the ship were N. M. U. but this fellow, and he was an I. S. U., and nobody wanted him on there. And just then the pumpman hollered at me, and I ran over to shut off the valve. And I came back, and the A. B. had left there. And Tranberg and I stood there, and we talked a few minutes about what this fellow had said, and he told me: "When you go back aft you tell those people I don't want none of that kind of stuff on here. I am not going to have it. I thought I got rid of that when I got [458] rid of that fellow yesterday."

Trial Examiner Myers: What name?

A. Tranberg. He said when he got rid of that fellow yesterday.

Q. (By Mr. Wright) Now, Mr. Hart, to whom did he refer about having gotten rid of him yesterday?

A. I suppose he meant Buckless. He had fired Buckless yesterday.

Q. Had he gotten rid of anybody else besides Buckless the day before?

A. Yes, an ordinary seaman, but I don't know what his name was; a rather peculiar name.

(Testimony of George B. Hart.)

Mr. Van Dusen: Mr. Examiner, I move that the answer, "I suppose he meant Buckless," be stricken, since he now says there were two men, and he can't tell which it was.

Trial Examiner Myers: You can bring that out on cross examination.

Mr. Van Dusen: I would like a ruling on my motion. He says, "I suppose he meant Buckless." That is not a definite statement.

Trial Examiner Myers: You can bring that out on cross examination. I deny your motion at present.

Mr. Van Dusen: Exception.

Trial Examiner Myers: Why do you think he meant Buckless? Let's clear it up now. [459]

A. Well, everybody on the ship thought Buckless got fired for union activity. That is the only thing I know of.

Q. Was this other seaman active in the union?

A. No, sir.

Q. Of the two, Buckless was the most active?

A. Yes, sir. Buckless was a delegate.

Q. More active? A. Yes, sir.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Wright) Now, Mr. Hart, can you tell us whether or not it was in line with your duties at that time, on April 19, at 8:00 a. m., to be in substantially the place where you were when you heard the conversation?

(Testimony of George B. Hart.)

A. Absolutely, that is where I was supposed to be.

Q. It was within your line of duty to be at that particular spot? A. Yes, sir.

Q. Do you know a man by the name of P. K. Guy? A. Yes, sir, I know him.

Q. Was he present at that time too, at the time of the conversation?

A. Yes, sir, he was. He was I would say a matter of ten or fifteen feet away.

Q. How long, Mr. Hart, had you worked on the same ship with Mr. Rosen? [460]

A. From March 1.

Q. To when?

A. To the time this happened. I don't know just the date. I said I was with him from March 1, until he was discharged.

Trial Examiner Myers: Some time in July you mean?

A. Discharged from that particular ship.

Q. (By Mr. Wright) On April 19?

A. Around in April some time. I don't just remember the date.

Q. Had you ever worked on any other ship with Mr. Rosen? A. No, sir.

Q. That was the first time you had ever worked with him? A. Yes, sir.

Q. How long have you been a seaman, Mr. Hart? A. Since January 7, 1916.

(Testimony of George B. Hart.)

Q. How many various kinds of jobs have you held on board ships during the time you have been a seaman, beginning with ordinary and working on up to various posts you have held on a ship?

A. Well, I started in the navy as apprentice seaman, and worked up to chief petty officer in the navy; therefore, a matter of about twelve or fifteen years. I started out in the Merchant Service as an A. B., and I have been A. B., quartermaster, and even had a shot at being radio man one time.

Q. During the time you have been in the navy, in the Merchant Marine, have you had occasion to observe a great many able- [461] bodied seamen work at their jobs?

A. I had a deck division of approximately 110 men for eight years in the navy, and was in direct charge of them.

Q. You were in charge of that many?

A. Yes, sir.

Q. All of them A. B. seamen?

A. No, sir. What we call an A. B. in the Merchant service is what we call first class seaman in the navy. Approximately sixty per cent of them were first class seamen, and the rest were second class.

Trial Examiner Myers: But there is really no difference——

A. No, sir.

Q. Except the pay?

(Testimony of George B. Hart.)

A. No, sir. One is in the Merchant service and the other is in the navy.

Q. I mean in the navy, between a seaman and a seaman first class; the only difference is in pay?

A. Yes, sir.

Q. Their duties are the same?

A. The same. [462]

Q. (By Mr. Wright) Mr. Hart, from your experience with able-bodied seamen, both as an able-bodied seaman yourself, and as foreman or supervisor of able-bodied seamen, do you believe you could tell a good able-bodied seaman from an ordinary able-bodied seaman or a poor able-bodied seaman in respect to his ability to work and the class of his work?

A. If I could see him working I undoubtedly could.

Q. Did you have occasion while you were in the service with Mr. Rosen to observe his work?

A. Yes, sir, I did. He was on my watch.

Q. From your experience and from your observation of Mr. Rosen would you say that he was a good able-bodied seaman and that he did his work well?

A. I certainly would.

Q. Would you say he was above the average?

A. Yes, I believe he is above the average one I have met, tanker seamen, anywhere.

Q. Mr. Hart, have you been an employee on the steamship "Louisiana" also?

A. Yes, sir.

(Testimony of George B. Hart.)

Q. Can you state about what time you were an employee on that ship?

A. From the 4th of July this year until the 7th of this month.

Trial Examiner Myers: Does the "Louisiana" belong to the [463] Texas Company?

Mr. Wright: I am getting ready to ask him that.

Q. Do you know what company the steamship "Louisiana" belongs to?

A. I don't know what company the steamship "Louisiana" belongs to. The motorship "Louisiana" belongs to The Texas Company.

Q. Mr. Hart, during the time you were on the vessel "Louisiana" did you have occasion to see the instrument that has been marked "Board's Exhibit No. 9"? A. Yes, sir.

Q. Will you state where you saw this instrument?

A. I was on the "Louisiana." I was on there as an A. B. There were two of us in the room, and the other A. B. in the room was a fellow by the name of Shaw. I don't know what his first name is, but he was the deck delegate. He received one of these letters in the mail.

Q. A letter in which this circular was?

A. Yes, sir.

Q. Were you there when the letter was opened?

A. Yes, sir, I was.

(Testimony of George B. Hart.)

Q. What happened to that instrument after it was taken out of the envelope?

A. Well, they were all back in the mess hall drinking coffee, and when he opened the letter he handed it around, and some of [464] us read it; and then he took a thumb tack and stuck it up on the bulkhead in the mess hall, and it stayed there several days.

Q. Can you say how many days it stayed there?

A. I would say that was a week, something like that.

Q. During the course of a week does the captain of a vessel and the mates, boatswain and engineers have occasion to come into the crew's mess ordinarily?

A. On that particular ship the boatswain was in there at least twice a day. He had his coffee in there with us at coffee time. The mate, he might go back there, and he might not; but the captain on there, he usually inspects the quarters and passageway back aft to see that they were clean and shipshape, and the mess rooms. He was in there some time during that time.

Q. Mr. Hart, during the course of the time while this instrument was up in the mess room did you ever see the captain in there reading it?

A. No, I never personally saw him in there reading it.

Q. Did you ever see one of the mates in there reading it?

A. I can't say that I did.

(Testimony of George B. Hart.)

Trial Examiner Myers: Did you ever see either one of them look at it?

A. No, sir.

Q. (By Mr. Wright) How about the boatswain? [465]

A. The boatswain read it.

Q. How about the chief engineer?

A. I don't know that I ever saw the chief engineer in there.

Q. Mr. Hart, have you ever talked with any one who did see the captain of the vessel reading that instrument while it was in the mess room?

A. Yes, I have, my room mate, Shaw.

Mr. Wright: That is all.

Mr. Van Dusen: I move to strike that on the ground that it is hearsay. He was not there when the captain looked at the circular. It is what Mr. Shaw told him.

Trial Examiner Myers: He only asked him if he saw anybody there.

Mr. Van Dusen: No, he asked him if any one told him that the captain looked at it.

Trial Examiner Myers: Will you read the question, please?

(Question read.)

Trial Examiner Myers: I will overrule it.

Mr. Williams: I understand the answer is not quite responsive. That question could be answered "yes" or "no". It goes forward.

(Testimony of George B. Hart.)

Trial Examiner Myers: If you move to strike it as being not responsive I will strike everything except the word, [466] "yes."

Mr. Williams: All right, I move that it be stricken. The question is not responsive. The question is not responsive; and, furthermore, it is hearsay as to what was said. I move to strike it out as not responsive.

Trial Examiner Myers: Just strike out everything except the word "yes." Otherwise, the motion is denied.

Mr. Van Dusen: That is satisfactory.

Q. (By Mr. Wright) Mr. Hart, what was that person's name?

A. His last name was Shaw.

Q. Was he your room mate? A. Yes, sir.

Mr. Wright: That is all.

Cross Examination

Q. (By Mr. Van Dusen) Mr. Hart, you are a member of the N. M. U., are you?

A. Yes, sir.

Q. How long have you been a member of the N. M. U.? A. July last year.

Q. July last year? A. Yes, sir.

Q. 1937? A. Yes, sir.

Q. Are you employed on any ship now, Mr. Hart?

A. Not since the 7th of this month. [467]

Q. Did you leave that ship? A. Yes, sir.

(Testimony of George B. Hart.)

Q. What ship was that, you say?

A. Motorship "Louisiana".

Q. You left of your own accord?

A. Yes, sir.

Q. Now this conversation between Mr. Rosen and Mr. Herman that you overheard, was any one else present?

A. Not that I know of.

Q. Now I believe you said that you were present when Mr. Herman and Mr. Tranberg had a conversation?

A. Yes, sir.

Q. I understood you to say that a pumpman was there?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you know his name?

A. Jack Dillon or Dallan, or some such name as that.

Q. Now, Mr. Hart, when Mr. Wright asked you if you knew to whom the mate was referring when he said he got rid of that fellow yesterday, and you answered, I suppose it was Buckless, you don't know of your own personal knowledge that it was Buckless, do you?

A. No, he didn't say Buckless. That was just a guess of mine about Buckless. [468]

Q. It could have been either Buckless or this other man you refer to, is that right?

A. Yes, sir.

Mr. Wright: I object to that as calling for a conclusion.

(Testimony of George B. Hart.)

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) You were not present when Buckless left the ship, were you? Withdraw that. You were not present when Buckless was paid off and left the ship?

A. I believe I was present when he was paid off.

Q. Well, did the chief mate say anything regarding his leaving the ship?

A. I couldn't say as to that.

Q. You didn't hear anything?

A. I don't know.

Q. Did you hear Buckless say anything?

A. Well, Buckless told me that he was fired, and I thought he was kidding me.

Q. No, I mean you didn't hear Buckless say anything to the mate? A. No.

Q. Were you present when Rosen was paid off?

A. No, I was not there when he got his money. I was there when he left the ship.

Q. Were you there when he got his discharge certificate? [469] A. No, sir.

Q. Did you hear any conversation between Rosen and the mate or the captain at the time he got his discharge or was paid off?

A. Not just at the time he got his discharge.

Q. Or just prior to that time?

A. Yes, sir.

Q. Did you hear the mate say to Rosen that he didn't want him on the ship because he had been neglecting his duties?

(Testimony of George B. Hart.)

A. No, sir, that was not what I heard him say.

Q. What did you hear?

A. I heard Rosen asking him what he was fired for.

Q. And what did the mate say?

A. I believe Mr. Tranberg told him he didn't like the way he worked.

Q. Was the captain there at the time?

A. No, I don't believe he was there. I don't remember him being there.

Q. Well, now, did you hear the captain say to Buckless either at the time he was paid off or shortly prior to that time that he didn't want him on the ship because he had been drunk and had taken on some liquor at Bilbao, Spain?

A. No, sir.

Q. You didn't hear that?

A. No, sir. [470]

Q. You were not present all the time Buckless spoke to the mate and the captain at the time he left the ship?

A. No, sir, I was not.

Q. All right. Now this Mr. T. K. Guy you referred to, what was his job on the ship?

A. He was ordinary seaman.

Q. Ordinary seaman?

A. I believe he was on my watch.

Q. Did you remain on the ship on its next trip?

A. Yes, sir.

Q. Were you on Texas Company ships since that time down to the present time?

A. Yes, sir.

(Testimony of George B. Hart.)

Q. Were you particularly friendly with Rosen and Buckless?

A. No, not any more than anybody else.

Q. Now you said that from your observation of Mr. Rosen's work he was a good A. B., didn't you?

A. Yes, sir.

Q. Well now you didn't see him all the time he was on duty, did you?

A. Not constantly, no, sir.

Q. So that you cannot say of your own personal knowledge that he attended to his duties all the time he was on duty, can you?

A. No, I didn't follow him around or anything like that. I [471] was in the wheelhouse most of the time.

Q. You were quartermaster on that ship?

A. Yes, sir.

Q. During your watch you had to be at the wheel most of the time?

A. At sea, all the time.

Q. At sea, all the time?

A. Except the time I was relieved for coffee.

Q. How long a period of time would that be?

A. Twenty minutes or half an hour.

Q. Rosen was an A. B., was he not?

A. Yes, sir.

Q. And his duties covered a wider range of the ship than yours?

A. Certainly, all over the ship.

(Testimony of George B. Hart.)

Q. So you only saw him when he was up around your section of the ship? A. And forward.

Q. Now did you have occasion to see Buckless while you were on duty or while you were on the ship? A. Yes, sir.

Q. Did you at any time during that trip ever see Mr. Buckless in an intoxicated condition?

A. No, sir.

Q. Did you get off the ship at Bilbao, Spain?

[472]

A. I didn't make the trip to Spain.

Q. That was a later trip?

A. I came on the day they got back, I believe it was.

Q. Did you ever see Mr. Buckless come aboard the ship in an intoxicated condition?

A. No, sir.

Trial Examiner Myers: Or under the influence of liquor? A. No, sir, I never did.

Q. (By Mr. Van Dusen) Did you ever see any liquor in his possession?

A. On the beach I have seen him drink beer.

Q. Where?

A. Over on the beach I have seen him drink beer.

Q. Just prior to sailing time?

A. No, I don't know that it was just prior to sailing time. You go there, and you go in different places, and you see different fellows in there. I have seen different fellows in there drinking beer and one thing and another.

(Testimony of George B. Hart.)

Q. How about other ports other than Port Arthur?

A. I believe I did at one time see him at New Haven drinking some beer out there one day.

Q. You are not usually in these ports very long, are you?

A. No, about ten or twelve or fifteen hours, as a rule; maybe overnight. [473]

Mr. Van Dusen: That is all.

Redirect Examination

Q. (By Mr. Wright) Just one question, Mr. Hart. During the time when you and Mr. Rosen were on the steamship "Nevada" did you have an occasion to observe Mr. Rosen's work enough to form an opinion with respect to the quality of his work, his competency?

A. As a seaman, you mean? [474]

Q. Just seeing him around working.

A. I have seen him work on the deck and do splicing and one thing and another, getting ready for loading, and the way he handled the gear and one thing another, and while we were in port.

Q. Mr. Hart, was Mr. Buckless on your watch?

A. He was boatswain on the ship.

Q. On your watch?

A. No. The boatswain is usually a day worker; turns to at eight o'clock, and knocks off at four or five. And while we were at Cat Island the captain yanked him off the day work and put him on the

(Testimony of George B. Hart.)

watch out there so they would have three men on watch, or four men on watch.

Q. Have you stated yet what your watch was?

A. Eight to twelve.

Q. Eight to twelve?

A. Eight to twelve first; and then after Rosen left ship they took a man, or after Buckless left the ship, they took a man that was quarter master and made him boatswain; and another man by the name of Lee Arnold was on the ship. He had the four to eight watch, and they shoved me up on the four to eight watch, and the new man that came on took the eight to twelve watch.

Q. So you were not on watch with him?

A. The only time he was on a watch right there with me was [475] when he was at Cat Island.

Q. In other words, you were off duty when he was on duty?

A. Yes, sir.

Q. And did you have occasion to observe Mr. Buckless' work?

A. Yes, several times.

Q. From you experience and observation of Mr. Buckless' work, would you say that he was a competent seaman?

A. Yes, sir, he was.

Q. What would you say that he was a competent boatswain?

A. Yes, sir, I believe he is.

Q. Would you say that his seamanship was above the average, or average, or below the average?

A. I would say it is at least average.

Mr. Wright: That is all.

(Testimony of George B. Hart.)

Recross Examination

Q. (By Mr. Van Dusen) Mr. Hart, on about how many occasions would you say you saw Mr. Buckless attending to his duties?

A. Well, every time you go into port the quartermaster goes down and works on the deck, loading and unloading, and tying up. Every time you come in the quartermaster assists in tying up the ship. I would say that all together there were fifteen or twenty times that I was out on deck working with him.

Q. When you did see him, for what period of time was it, [476] on each occasion, approximately?

A. Oh, up in New Haven I was on the deck four hours up there with him. He had the gang out working. And several other occasions I was on deck for a matter of two hours at a stretch when he would be out there, or something like that.

Q. You didn't see him all the time that he was on duty, did you?

A. No, sir. That would be impossible.

Q. So that you cannot say of your own knowledge whether he attended to his duties at the time you did not see him?

A. No, sir, I couldn't.

Mr. Van Dusen: That is all.

Mr. Wright: That is all.

Trial Examiner Myers: You are excused, Mr. Hart.

The Witness: Thank you.

JAMES P. BLASINGAME,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: Give your name and address to the reporter.

A. James P. Blasingame, 211 Sixth Street, Port Arthur, Texas.

Q. (By Mr. Martin) Mr. Blasingame, are you an able-bodied [477] seaman? A. Yes, sir.

Q. How long have you been at sea?

A. Approximately ten years.

Q. How long have you been an able-bodied seaman? A. Seven years.

Q. What jobs have you held on boat?

A. Ordinary seaman, A. B., boatswain, quarter-master, master of arms, deck watchman.

Q. Have you ever been employed by The Texas Company? A. Yes, sir.

Q. When were you first employed by The Texas Company?

A. I have it here on a piece of paper. May I read it?

Trial Examiner Myers: Go ahead.

A. July 15, 1931.

Q. (By Mr. Martin) On what boat?

A. Steamship "Virginia."

Q. When did you leave that boat?

A. August 18, 1931.

Q. Why did you leave that boat?

(Testimony of James P. Blasingame.)

A. Well she tied up in New York during the depression.

Q. During the depression?

A. She tied up.

Q. Were others laid off?

A. We were laid off, the full crew. [478]

Q. The full crew laid off?

A. Except the officers.

Q. Was the boat put in dry dock?

A. No, laid up in the shipyard.

Q. Put out of commission temporarily?

A. Yes, sir.

Q. When did you next work for The Texas Company? A. September 27, 1933.

Q. Until when?

A. Until October 18, 1933.

Q. On what boat?

A. Steamship "Virginia."

Q. Are you sure?

A. Yes, sir; second time I had been on her.

Q. When did you next work for The Texas Company? A. November 21, 1933.

Q. Until when?

A. Until December 23, 1933.

Q. On what boat?

A. Barge by the name of "Magnolia."

Q. Texas Company barge? A. Yes, sir.

Q. "Magnolia"? A. Yes, sir.

Q. Why did you leave that? [479]

(Testimony of James P. Blasingame.)

A. It also tied up.

Q. Was it put in dry dock?

A. No. It was tied up to the west bank, and later transferred to New York and used for storage tank.

Q. Was it temporarily put out of commission when you left it? A. Yes, sir.

Q. Did all the crew leave it?

A. Everybody except the captain.

Q. I believe I neglected to ask you why you left the "Virginia" the second time you were on it.

A. I got hurt on there.

Q. You got hurt? A. Yes, sir.

Q. Then you left for medical attention?

A. Yes, sir.

Q. After leaving the "Magnolia" when did you next work for The Texas Company?

A. December 29, 1933.

Q. Until when? A. Until April 20, 1934.

Q. On what boat? A. "Nevada."

Q. Why did you leave that boat?

A. Quit voluntarily. [480]

Q. For purposes of your own?

A. Yes, sir.

Q. When did you next work for The Texas Company?

A. June, on or about the 30th, 1937.

Q. Until when?

A. Until September 19, 1937.

Q. On what boat?

(Testimony of James P. Blasingame.)

A. SS "California."

Q. And why did you leave that boat?

A. I got fired.

Q. Since September 19, 1937 have you worked for The Texas Company? A. No, sir.

Q. Are you a member of the National Maritime Union? A. Yes, sir.

Q. When did you join?

A. Well I joined the N. M. U. October 11, 1937.

Q. Are you sure it was the N. M. U. then?

A. Yes, sir. The National Maritime Union.

Q. Union? A. Yes, sir.

Trial Examiner Myers: Did you say you were a member of the Union after you were fired?

A. Yes, sir, a member of the rank and file of the I. S. U.

Q. Did you belong to the I. S. U. first? [481]

A. Yes, sir. I always did belong to the I. S. U.

Q. (By Mr. Martin) To clarify the record, Mr. Examiner, did I understand, Mr. Blasingame, that you were once a member of the International Seamen's Union? A. Yes, sir.

Q. Do you know about when you joined that?

A. Some time in 1934.

Q. Some time in 1934? A. Yes, sir.

Q. And then when the so-called rank and file movement of International Seaman's Union broke away, did you go with the new group?

A. I did, called the rank and file of the I. S. U. then.

(Testimony of James P. Blasingame.)

Q. Do you know about when that was?

A. That was in October or November; October, I believe.

Q. Of 1937? A. 1936.

Trial Examiner Myers: That is what I asked you, whether it was 1937 or 1936. Were you a member of the N. M. U. at the time you were fired by The Texas Company, as you say?

A. I was a member of the rank and file of the I. S. U.

Q. Well when were you fired?

A. September, 1937.

Q. A year ago? [482] A. Yes, sir.

Q. Were you a member—

A. I was pledged member. I didn't have any book.

Q. What kind of a member.

A. A pledged member.

Trial Examiner Myers: All right.

Q. (By Mr. Martin) You were a pledged member of the N. M. U. when you were fired?

A. Yes, sir.

Q. From the "California"?

A. Yes, sir.

Mr. Williams: Mr. Examiner, I don't like to make these objections so often, but I do submit that the attorney should not testify, and then ask the witness if that is so.

Trial Examiner Myers: Don't ask so many leading questions.

(Testimony of James P. Blasingame.)

Q. (By Mr. Martin) Mr. Blasingame, when you shipped on the SS "California" and first went aboard, did you have a conversation with the mate?

A. The first man I saw was the boatswain.

Q. Did you have a conversation with the boatswain? A. Yes, sir.

Q. Who was the boatswain?

A. Leslie Thompson.

Q. Do you remember substantially what was said in that [483] conversation?

A. Yes, sir.

Q. What did the boatswain say?

Mr. Williams: We have to interpose an objection here because clearly the boatswain is a foreman, and not an officer of the ship.

Trial Examiner Myers: That is the reason I am allowing it.

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Continue, please.

A. I went aboard, and I didn't see anybody. And I went on back to the forecastle, and the crew and the boatswain were standing there; and I asked the boatswain which was a vacant bunk.

And he said: "Never mind a vacant bunk. Go up and see the mate. He is on the forecastle head."

And I said: "All right."

So I went up and saw the mate on the forecastle head, and I told him: "I am the new A. B."

And he said: "Are you an A. B.?"

(Testimony of James P. Blasingame.)

And I said: "Yes, I have been one about seven or eight years."

He said: "Can you steer?"

And I said: "Yes."

And he said: "Well, there is no A. B. job open. It [484] is a quartermaster job."

And he says: "Do you want it?"

And I said: "Yes, I will take it."

And he says: "Well, okeh then."

And I started aft to unpack, and he said: "Just a minute. I want you to understand something right now. There is no drunkenness assisting watches or union agitating aboard here. Under those conditions, all right."

And I said: "Okeh."

And I went on back and unpacked. [485]

Q. (By Mr. Martin) Was that all?

A. That was all the conversation at that time.

Q. Who was mate on the "California"?

A. Mr. Edward Baldwin was relieving the chief mate.

Q. Who was the chief mate?

A. The chief mate was on vacation, David Rosen.

Q. Was the man you referred to as mate the man with whom you had the conversation you have just related, was that Mr. Baldwin?

A. He was Mr. Baldwin.

Q. The acting chief mate?

A. The acting chief mate.

(Testimony of James P. Blasingame.)

Q. Did you have a discussion with Mr. Baldwin the following day?

A. It was the first day at sea. I don't believe it was the following day. I believe we stayed there another day. It was the first day at sea.

Q. Will you tell us nearly as you can remember what in substance was said at that conversation?

A. Well, he comes up, and he says: "Well, I guess you know that you get a station." In other words, he meant a certain part to keep clean. He says: "You have got all the brass, windows and decks and varnish work in the wheelhouse to keep up."

Q. On the wheelhouse? [486]

A. In the wheelhouse. "And just before you get into port you have got about two hours brass to shine." And he said: "You have got to do that without any time back or overtime or anything. It belongs with the job."

Q. And did you reply?

A. Well, I was hard up, and had to say, all right.

Trial Examiner Myers: At sea?

A. At sea.

Q. (By Mr. Martin) Did you say anything else?

A. No, sir, I didn't say anything more.

Q. Did you make any reference to unions?

A. No, sir, not right then. The second trip after the next trip I did.

(Testimony of James P. Blasingame.)

Q. I believe you testified that some time subsequent to the time you shipped on the "California" the chief mate Dave Rosen returned to his post as chief mate?

A. Yes, sir, that was about the second trip.

Q. And what happened to Mr. Baldwin then?

A. He goes back to second mate.

Q. Now after Mr. Baldwin went back as second mate do you remember having a conversation or a number of conversations with him?

A. Yes, sir, mighty near every night. He had the 12:00 to 4:00 watch, the same as I did.

Q. And what did you discuss in those conversations? [487]

A. Well, he was doing all the discussion, about how he ran that ship, and how they had been running it without having any union men aboard, and about a man that had been on there that had belonged to the union, and got rid of him.

Q. Did he say that?

A. Yes, sir. He mentioned one name, a man I knew, a man by the name of Charlie Morton. He told me he had to get rid of him because he was agitating union all the time.

Q. He said——

A. He said he had to get rid of him because he was agitating union all the time. He asked me what union I belonged to, and I told him I was not discussing unions.

(Testimony of James P. Blasingame.)

Q. That you were not discussing unions?

A. No union right then.

Q. You told him you were not a member of any union?

A. In a roundabout way, for if I told him that I might as well get off, and I wanted to make another trip.

Q. You told him you were not a member of a union, when you were a member of the union?

A. In a roundabout way, yes, sir.

Q. Why did you tell him a lie?

A. Well, I was informed before I went on there that the minute they found out I was a union man I got fired, no matter where it was at, up north or down south, or no matter where it was at. [488]

Mr. Van Dusen: Mr. Examiner, I move to strike.

Trial Examiner Myers: Was that the reason why he denied his union membership? Motion denied.

Q. (By Mr. Martin) Did you lie also because you were under the impression you had gained from Mr. Baldwin in your conversations with him?

A. No, sir.

Q. Did you gather from your conversations with Mr. Baldwin that Mr. Baldwin was in favor of the union?

A. He told me all the time that he didn't have any use for the union whatsoever.

Q. Was that one of the reasons why you didn't admit your membership?

(Testimony of James P. Blasingame.)

A. He told me he belonged to some union out on the west coast, and he got gypped out of about \$50.00, and he never did get nothing out of it, and he ain't never had any use for a union since.

Q. And you felt that you understood what he thought about unions? A. Yes, sir.

Q. And that is one of the reasons you told him you were not a member of the union?

A. Yes, sir.

Trial Examiner Myers: In other words, you feared you would lose your job if he learned you were a member of the [489] union?

A. I knew it. I didn't fear it.

Q. (By Mr. Martin) In these conversations was any mention made of members of the crew then on the ship? A. Yes, sir.

Q. Who?

A. Gordon Rosen, Arthur Spencer, Slim Clark, a fellow by the name of Myers, and another one by the name of Buster Scott.

Q. What was said?

A. And Smith. They had asked me several times where did those guys come from, and did I ever see them around the union hall, and did they ever belong to any kind of a union, and did I ever see them on strike, or how well I knew them, and all such stuff.

Q. And what did you reply?

(Testimony of James P. Blasingame.)

A. Well, I told them I knew them, but I didn't know whether they belonged to a union or not. That is all I had to tell him.

Q. Now, Mr. Blasingame, could you say exactly when any of those conversations took place?

A. Well, they were mostly at sea, some time between 12:00 and 4:00 o'clock in the morning, mostly.

Q. Between 12:00 and 4:00 o'clock in the morning? A. Yes, sir. [490]

Q. Where would they take place?

A. I would be at the wheel, and he would be standing there talking.

Q. Now he was the mate on your ship?

A. Yes, sir.

Q. What was his duty or duties?

A. Keeping a lookout there.

Trial Examiner Myers: He had charge of the ship, didn't he, during those hours?

A. Yes, sir.

Q. (By Mr. Martin) And you were the quartermaster? A. I was the quartermaster.

Q. Who told you which way to turn the wheel?

A. I was supposed to know that. The man I relieve gives me a course.

Q. What?

A. The man I relieve at 12:00 o'clock, he gives me a course, and I am supposed to know how to follow it.

Q. I see.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: And when they change that course who does that?

A. The officer on watch.

Q. (By Mr. Martin) And who was that?

A. The 12:00 to 4:00 watch was Baldwin, and the 4:00 to 8:00 watch was Dave Rosen, and the 8:00 to 12:00—— [491]

Q. Baldwin spent a good deal of time up there in the pilot house while he was on watch during that time? A. Yes, sir.

Q. Did Mr. Baldwin ever use the words “rank and file”?

A. Yes, sir, quite often. That was a sort of slander they used for union men, rank and file rats.

Trial Examiner Myers: What was that?

A. Rank and file rats.

Q. (By Mr. Martin) Rank and file rats?

A. Yes, sir.

Q. Do you remember any conversation with the captain?

A. No, sir. That captain didn't talk to me but very little at that time.

Q. Now any time you were on the “California” was your work ever complimented?

A. Not work, no.

Q. Did the captain ever say anything to you that led you to believe that you were doing a good job as quartermaster?

A. Yes, sir, by never missing a watch.

(Testimony of James P. Blasingame.)

Q. Never missing a watch?

A. Yes, sir, being sober and never missing a watch.

Q. When did he say that, and where were you?

A. I was at the wheel.

Q. During what shift? A. 12:00 to 4:00.

[492]

Q. In the daytime or night?

A. In the daytime.

Q. The captain there? A. Yes, sir.

Q. At the wheel?

A. He was in the wheelhouse.

Q. Where you were? A. Yes, sir.

Q. And what did the captain say?

A. That is what he said. He said: "Well, we have got a good quartermaster now. None of them miss watches." There were three.

Q. Three on the ship?

A. Three quartermasters, yes, sir.

Q. And he said: "We have three good quartermasters on the ship now"? A. Yes, sir.

Q. And anything else?

A. That is all he said right then.

Q. Did he give the reasons why they were good quartermasters?

A. Well, they never missed any watches; always able to take the ship out.

Q. Any other reason? A. No, sir. [493]

Trial Examiner Myers: He said something about being sober?

(Testimony of James P. Blasingame.)

A. Not being drunk, and being sober.

Q. (By Mr. Martin) Some time during your period on the "California" do you remember an ordinary seaman's joining the crew at Port Arthur?

A. Yes, sir.

Q. Do you remember his name?

A. No, I don't. I remember the ship he came off of just before that.

Q. What was that?

A. "Paco", Pennsylvania Shipping Company.

Q. "Paco"? A. P-a-c-o.

Q. Did you have a discussion with Mate Baldwin about this man? A. Yes, sir.

Q. What did Mate Baldwin say?

A. He asked me was he a rank and file.

Q. What did you say?

A. I said: "How would I know. I just only know the man a few hours."

Q. Did the mate say anything more?

A. Well, he said: "Well, if he is he won't be on this ship very long." That is all he said right then. [494]

Q. Do you remember a fireman who came aboard at Newburg, New York? A. Yes, sir.

Q. Do you know his name?

A. His name was Dan Whittenburg.

Q. Did you have a discussion with Mate Baldwin concerning this man?

A. Yes, sir. I was standing at the gangway when he came up.

(Testimony of James P. Blasingame.)

Q. You were standing at the gangway when he came up? A. Yes, sir.

Trial Examiner Myers: When he came up?

A. Yes, sir, the new fireman.

Q. (By Mr. Martin) What did Baldwin say?

A. He was second mate then.

Q. Yes.

A. I and Spencer and the wireless operator and Baldwin were standing right there at the pump house, and he came up the gangway, which was about fifteen feet off, and the second mate made a remark: "There is a man that won't ride this ship long," because he had an N. M. U. button on the lapel of his coat.

Q. Where was the boat on or about the Sunday prior to Labor Day, 1937?

A. I believe it was anchored, to the best of my recollection, anchored in New York harbor. [495]

Q. Now, on or about that time did a discussion arise concerning overtime?

A. No, that was after Labor Day.

Q. That was after Labor day?

A. Yes, sir.

Q. Did a discussion concerning brass rails or payment for shining brass rails arise about that time also? A. Overtime for it?

Q. Yes.

A. No, sir. That was long before that.

Q. Now, tell me what happened Tuesday after Labor Day?

(Testimony of James P. Blasingame.)

A. Well, I and Rosen were up forward taking down some wind sails, and the mate came around, Dave Rosen, and he said to me, here you have got two and a half days coming; and he told Rosen he had three days, I believe it was, and so he walked on away. So I asked Rosen: "There must be a mistake there, ain't there?" And he said: "Yes, there is a mistake, a big one." So, about that time, it was about 10:00 o'clock, coffee time, so me and Rosen, we decided to quit.

Q. Did you talk with other members of the crew?

A. Not yet. Just a minute. So, the crew said, there is no use quitting. So we decided we would see the old man, see the skipper, the captain. So they delegated us to go up and see the captain. So, I and Gordon Rosen, we went up to see him. And on the way up the chief mate hollered at us: "Where are [496] you going? Ain't you satisfied with that time?" And we didn't answer. We just kept on going, and he followed us up to the captain's quarters. And the captain was standing there, and he said: "What is the matter?" Rosen says: "Our overtime ain't right here." And the captain said: "What is the matter with it?" And Rosen says: "Well, there are ships, one on each side of us, that are paying the right overtime, and you are not." And the captain says: "Those are union ships. This is no union ship." Well, I says then:

(Testimony of James P. Blasingame.)

“We want the same thing. What we have got coming and what we are entitled to is what we want.” And the captain, in a little bit, says: “Well, I will give you four days if you will not quit.” And I said: “Well, I don’t know. I will have to go back and see the rest of the crew about it.” So we went back to see the rest of the crew, and spoke up right away and told them we got four days. And they spoke up, and they said: “No, we have got five days coming.” And we said: “All right, we will go up there and see if we can get five days.” So, the boatswain was sitting there, and he said: “If you guys stick together we will get five days.” And he said: “I will go up and tell the old man we want five days, or we will all quit.” And the boatswain was gone about ten minutes, and he comes back, and says: “The captain says to stay back here. He is going to phone Mr. J. P. Roney.” So, I don’t know whether he called Roney or not. He came back in about an hour, and he said every- [497] thing was all right. “You will get your five days. Go ahead and work.” So, we turned to and went back to work. And that is all that happened right then.

Q. Mr. Blasingame, during your period on the “California” did you attend all the union meetings? A. Secretly, yes, sir.

Q. Of the crew? A. Yes, sir.

Q. Were you elected delegate of the crew at any other time than the time you told us about?

A. No, sir. [498]

(Testimony of James P. Blasingame.)

Q. (By Mr. Martin) Mr. Blasingame, as the "California" went through Sabine Pass on what turned out to be the end of your stay on the "California", did you see any other boat in the Pass?

A. Just as we were coming into the Pass.

Q. You saw another boat? A. Yes, sir.

Q. What was that boat?

A. That was the "Larry Doheney". I believe it is a Richfield tanker.

Q. Did you have any discussion with Mate Baldwin concerning this boat? A. Yes, sir.

Q. What did he say? A. He says——

Mr. Williams: Did the "Larry Doheney" belong to The Texas Company?

A. No, sir.

Mr. Williams: Then I submit anything the officer said about some other ship has nothing to do with this case.

Trial Examiner Myers: Do you intend connecting this up?

Mr. Martin: This will connect up with the conversations that have already been put in.

Trial Examiner Myers: I will allow it subject to the objection. If he does not connect it up I will entertain a [499] motion to strike it out.

Q. (By Mr. Martin) What did Baldwin say with respect to that boat?

A. He said, "There is a ship—no. He said, "There is one of your rank and file ships." He said, "Don't you think this ship looks better?"

(Testimony of James P. Blasingame.)

I said, "No, it don't."

That is all that was said about that.

Mr. Williams: Now, I submit that has no place in this investigation.

Trial Examiner Myers: I will deny the motion to strike.

Mr. Williams: Note the exception.

Trial Examiner Myers: When Mr. Baldwin made the remark about "rank and file" what does that mean?

A. Well, "rank and file" means run by the rank and file.

Trial Examiner Myers: I beg your pardon.

A. A union run by individuals.

Trial Examiner Myers: You mean when he said "rank and file" he meant the Union?

A. He meant——

Trial Examiner Myers: The members of the Union?

A. He meant the members of the Union, yes, sir.

Q. (By Mr. Martin) Do you remember the date when the "California" docked at Port Arthur?

A. It docked on September, on or about the 19th, 1937. [500]

Q. At about what time did it dock?

A. Well, I would say between eight and ten.

Q. Between eight and ten? A. Yes.

(Testimony of James P. Blasingame.)

Q. In the morning or afternoon?

A. In the morning.

Q. Did you have a discussion with the chief mate that day? A. Yes, sir.

Q. At about what time?

A. Well, I would say about 9:30.

Q. When you had this discussion, were you off duty? A. I was off duty.

Q. Had you been on the midnight to four a. m. watch? A. Yes, sir.

Q. Will you tell us where you were standing when you had this discussion with the mate?

A. I was standing by the gangway waiting for the mail to come aboard.

Q. And what did the mate say?

A. The mate came walking up to me. He said, "Blasingame, you are fired right now," he says.

Q. Did he give you any reason why you were fired?

A. It surprised me. I stood there and looked a minute. I walked over to him and said, "Mr. Mate, what is the matter? I haven't been drunk or missed any watches." [501]

He said, "Never mind. You can't ride this ship any more. Go ride one of your rank and file ships."

Then he comes back about five minutes later. He says, "Where is Spencer? What part did he play in the game"; in that strike up in New York, whatever it was.

(Testimony of James P. Blasingame.)

I said, "The same as any other members did."

And then he walks on off.

Q. Did you have any other discussion with the mate concerning that?

A. No, no more only, "Go up and get your money."

Q. He told you to go up and get your money?

A. That is the last thing he told me.

Q. Did he say, "You are fired right now"?

A. He said, "You are finished right now." He says, "Go up and get your money."

Q. Did he say, "You are finished as of the end of this voyage"?

A. No, he didn't say that. He said, "You are finished with this ship."

Q. "You are finished right now"?

A. "Right now. Go up and get your money now," he says.

Q. Did you go and get your money right then?

A. I went up there and the captain was very busy. There was some officials up there and I went on back to my room and I was going to wait a little while. [502]

Q. Now, while you were in your room, did you hear any discussion?

A. Yes, sir, the boatswain and the mate came flying through the passage way and the mate is hard of hearing and was talking loud.

Q. What mate is this? A. Dave Rosen.

(Testimony of James P. Blasingame.)

Q. Yes, sir.

A. And the boatswain was putting up an argument that, "You are firing the only good A. B. that I got on deck," and the mate hollered back at him, "I don't give a damn." He said, "These guys aren't going to ride this ship. This ship is no union ship and they ain't going to ride it," and by that time they were gone.

Q. Was any name mentioned in this conversation?

A. Rosen; Gordon Rosen.

Q. Who said, "Gordon Rosen"?

A. The boatswain.

Q. Do you remember what he said?

A. He said, "You are firing Rosen. He is the only good A. B. I got on deck."

Q. Approximately when did you leave the boat?

A. Between eleven and twelve o'clock.

Trial Examiner Myers: In the morning?

A. In the morning. [503]

Q. (By Mr. Martin) Did you leave the boat immediately after drawing your money and getting your papers?

A. Yes, sir.

Trial Examiner Myers: Who gave you your money and who gave you your papers?

A. The captain gave me my money and discharge.

Trial Examiner Myers: Did you ask him why you were fired?

A. No, I didn't ask him. I asked the mate.

(Testimony of James P. Blasingame.)

Q. (By Mr. Martin) Did the captain volunteer or tell you any reason why you were fired?

A. No. I didn't ask him. He already had the discharge made out.

Q. How long did you see the captain before you left the ship?

A. Well, there was several of them in there paying off and I went in there and got my money and went on out.

Q. Mr. Blasingame, you said there were several people who were signing off at the time you were, did you not?

A. Not signing off. They were getting money.

Q. They were getting money?

A. You have to sign a receipt for your money; pay voucher. I don't know. If there was anything else they were signing I don't know.

Q. Now, would you say how many there were getting paid off then.

A. Approximately about six. [504]

Q. Were these men signing the shipping articles; signing off the shipping articles?

A. No, sir. I don't know much about that part of it. I believe it is a payroll. When you draw I think you sign off of it. [505]

Q. Now, were you the last man to sign?

A. No, sir, I was ahead of some of these others.

Q. There were some people after you?

A. Yes, sir.

(Testimony of James P. Blasingame.)

Q. Now, what time did you say you left the ship?

A. Between 11:00 and 12:00 some time.

Q. Now, at the time you left were any men still working? A. Yes, sir.

Q. The men from the 8:00 a. m. to the noon shift were still working?

A. Yes, sir, I believe they had two or three day men on there. I am not sure, and the men on watch, I think they were working.

Q. Did you see any of those men in or around the captain's office when you were there signing whatever those papers were? A. No, sir.

Q. They weren't there?

A. I don't recollect of seeing any of them. They might have been there, but I didn't pay any attention to them.

Q. Mr. Blasingame, after you left the SS "California" did you register at the N. M. U. Hall?

A. I registered with Mr. Myers on the dock first when I was [illegible] down the dock leaving the ship.

[Illegible] registered with him right then? [506]

A. Right then. Give him my phone number, address, and name.

Q. Did you have a discussion with him?

A. No. I just told him I was getting off the "California" and wanted to register and he said, "All right," and took it down in a book.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: You didn't tell Mr. Myers that you were fired, did you?

A. No, sir, I didn't tell him that.

Q. (By Mr. Martin) Did you make an attempt after that to talk with Mr. Myers?

A. I waited about a month and I called him up.

Q. On the telephone?

A. On the telephone.

Q. Did you reach him? A. I did.

Q. What did you say?

A. I said, "Mr. Myers, this is Blasingame. I registered about a month ago. I would like to know if I am going to get called any time soon."

Just as soon as I told him my name he said, "I will call you when your time gets here," and he never did call me.

Q. He didn't call you? A. No.

Q. Have you seen Mr. Myers since? [507]

A. Yes, sir. About four or five months later I ran into him over there on Sixth Street and I said, "Mr. Myers, I would like to register."

He says, "All right."

He pulled out his book. He says, "What is your name?"

Just as soon as I told him my name he slammed the book together, put it in his pocket, and said, "I know you," and he went on and never did say no more.

Trial Examiner Myers: Is that Two Gun Myers?

(Testimony of James P. Blasingame.)

A. Two Gun Myers; Pistol Pete. Some call him Pistol Pete and others Two Gun.

Q. (By Mr. Martin) Mr. Blasingame, while you were on the "California" did you know on the boat a man by the name of Spencer? A. I did.

Q. Did you know his first name?

A. Arthur Spencer.

Q. Did Mr. Spencer attend union meetings?

A. Well, we didn't have no regular meetings on there, only the one where we all quit.

Q. Was Mr. Spencer to your knowledge ever elected a delegate on the boat?

A. Well, I don't know whether he was elected delegate or not, but he was spokesman.

Q. He was spokesman? [508]

A. Chairman I guess you would call it.

Q. Oh, he was chairman of some meetings?

A. Of one meeting.

Q. The one in New York?

A. The one in New York.

Q. Spencer was chairman of that meeting?

A. Yes, sir.

Q. Did he go with you and Rosen to the captain's office?

A. No, just me and Rosen was delegated to go up and see the captain.

Q. Did you see Spencer talking with any non-union members? A. Yes, sir.

Q. Did you hear any of the conversations?

(Testimony of James P. Blasingame.)

A. Yes, sir.

Q. What were the conversations about?

A. Well, he was telling about the good points that they had on the union ships. He was pointing out to them what they had to do on there; that they didn't do it on union ships, and how much better their food was.

Mr. Williams: We object to this unless it is shown that some officer of the ship was present.

Trial Examiner Myers: What position does Spencer hold?

A. He is a petty officer. He is a second pumpman.

Mr. Williams: I move to strike it out.

Trial Examiner Myers: Motion denied. [509]

Mr. Williams: Exception.

Trial Examiner Myers: It will be noted.

Mr. Williams: It is understood that the second pumpman is not an officer of the vessel.

Trial Examiner Myers: Well, he said he was a petty officer. That is the testimony so far. I don't know what that officer is.

Mr. Williams: Well, then, we object until it is shown that this man is actually an officer of the vessel.

Mr. Wright: Well, that is your worry.

Mr. Williams: You have made the statement that he is an officer of the vessel.

Mr. Van Dusen: May we ask the question at this point?

(Testimony of James P. Blasingame.)

Trial Examiner Myers: Certainly.

Q. (By Mr. Van Dusen) Mr. Blasingame, by "petty officer" you don't mean he was one of the officers in charge of the ship, do you? You don't mean Mr. Spencer was one of the officers in charge of the ship, do you?

A. He is not in charge of the ship, but he is in charge of his department.

Q. His boss is the chief engineer, isn't that correct?

A. His boss is the chief engineer.

Q. And he is one of the pumpmen working under the chief engineer, isn't he?

A. Yes, sir. [510]

Trial Examiner Myers: Well, does he give any orders?

A. To the quartermaster and to the man that is working with him.

Trial Examiner Myers: Has he got anybody working under him?

A. In port he has the quartermaster.

Trial Examiner Myers: I will abide by my ruling.

Mr. Williams: Exception.

Q. (By Mr. Martin) Mr. Blasingame, do you remember seeing this man, Spencer talk with any non-union men?

A. I do.

Q. In the presence of the captain, any of the mates, or the chief engineer?

A. Only the second assistant engineer. I can't recall his name.

(Testimony of James P. Blasingame.)

Q. You don't remember any other time? Any other officer?

A. Only the wireless operator.

Q. The wireless operator. How about the boatswain?

A. Yes, the boatswain. No mate and only one engineer.

Q. Did you hear that conversation which the engineer also heard?

A. I heard parts of it.

Q. You heard parts of it? A. Yes.

Q. Was that about the benefits of the union?

[511]

A. Well, they were talking—the second pumpman was talking to the chief pumpman.

Q. Yes.

A. Wanted to know when and why he didn't join the N. M. U. or some union. [512]

Trial Examiner Myers: Why who didn't join the union; the N. M. U. or some union?

A. The chief pumpman. His name is Dempsey.

Mr. Williams: In order to preserve our exception we move to strike the testimony of this witness in that particular for the reason that it is not shown that the conversation occurred in the presence of any officer of the vessel.

Trial Examiner Myers: Well, what about the chief engineer? It is a conversation between the chief engineer and the assistant chief engineer.

(Testimony of James P. Blasingame.)

Mr. Williams: I understand the chief engineer is not an officer of a vessel. He is in charge of the power plant.

Trial Examiner Myers: Well, what is the purpose of this line of inquiry, anyway, Mr. Martin?

Mr. Martin: So far we have been unable to contact Mr. Spencer who is on board a boat.

Trial Examiner Myers: Do you want to show that Spencer was discharged or fired for union activities?

Mr. Martin: That is right.

Trial Examiner Myers: All right then. I will allow it on that ground and overrule your objection, Judge, and ask the reporter to please note an exception.

Q. (By Mr. Martin) Can you add anything further as to what was said in that conversation?

A. Well, that is all I heard of the argument. They were [513] arguing before I got there and that is about all the argument I heard was that one argument. It wasn't no argument. It was just a conversation, but other times Spencer has been talking to the mess boys and a couple of ordinary seamen on there.

Q. You saw him?

Trial Examiner Myers: I understand, Judge—I see you rising to make an objection—that you have an objection to this entire line of testimony; that is, any conversations that Spencer might have

(Testimony of James P. Blasingame.)

had with any of the crew, unless that member of the crew was an officer of the boat, either the captain or one of the mates, is that right?

Mr. Williams: Yes.

Trial Examiner Myers: And the same ruling and I ask the reporter to note an exception.

Q. (By Mr. Martin) Now, Mr. Blasingame, after you left the SS "California" did you register at the N. M. U. Hall? A. Yes, sir.

Q. Did you register also at the Seamen's Church Institute? A. I did.

Q. On what list or lists?

A. On the open list.

Q. On the open list? A. Yes, sir.

Q. Was it your understanding that you could register on only [514] one list at the Seamen's Church Institute? A. I knew that.

Q. You knew that? A. Yes, sir.

Q. And so you registered on only one?

A. Only one.

Q. Has your name since come to the top on either list?

A. Yes, sir, it came to the top on the N. M. U. list.

Q. It came to the top on the N. M. U. list?

A. Yes, sir.

Q. And have you had a job since?

A. Yes, sir.

Q. On what boat?

(Testimony of James P. Blasingame.)

A. On the "Atlas", Standard Oil of New York.

Q. Can you tell us about when you went on the "Atlas"? A. It was a relief trip.

Q. One trip only? A. A half a trip.

Q. A half trip only?

A. Yes. I thought it was a round trip, but it was only half of one. That was about the latter part of July, it seems to me.

Q. The latter part of July 1938?

A. 1937. No, no. I take that back. Strike that out. It was in the latter part of October, 1937.

[515]

Q. A month or so after you left the "California"? A. The "California", yes, sir.

Q. When you took that trip did you understand that it was to be a relief trip only?

A. I didn't know it until I got aboard the ship the next morning and then I was told it would probably be a relief trip; that as far as they knew right then it was a relief trip.

Q. And that is what it turned out to be for you?

A. It turned out to be a relief trip.

Q. Do you remember how much you got paid for that trip?

A. Well, it was nine days at \$3.00 a day; probably \$27.00. I think it was about four or five dollars overtime added to \$27.00. Make it about \$32.00.

Q. Did you get room and board in addition?

A. Aboard the ship?

(Testimony of James P. Blasingame.)

Q. Yes. A. Yes, sir.

Q. After you left that boat were you at Port Arthur? A. New York.

Q. Did you come to Port Arthur by land or water?

A. No, they put me on another ship.

Q. What ship was that?

A. That was the "Dixie Arrow", Standard Oil of New York.

Q. And how long were you aboard that ship?

[516]

A. Nine days.

Q. When you entered that ship was anything said about its being a relief trip?

A. No, it was a steady job.

Q. That was a steady job? A. Yes.

Q. Now did you leave the vessel after nine days?

A. I did.

Q. Where did you leave it?

A. At Beaumont.

Q. At Beaumont?

A. Beaumont, yes, sir.

Q. Beaumont, Texas? A. Yes, sir.

Q. Why did you leave that boat?

A. Well, I had tonsilitis and I got off.

Q. Did you get off to obtain medical attention?

A. Yes, sir.

Q. Have you been out on any boat since that time? A. Yes, sir.

(Testimony of James P. Blasingame.)

Q. When did you next ship out?

A. Somewheres around the first of December, 1937. Just before Christmas some time or other.

Q. What line did you ship out on?

A. Standard Oil of New York, "Socony-Vacuum". [517]

Q. Do you remember the name of the boat?

A. "Socony-Vacuum".

Q. How long did you remain on that boat?

A. Made an 18 day trip; up there and back down here.

Q. Back to? A. Beaumont.

Q. Is that the only trip you made on that boat?

A. Yes, sir. I went to the hospital then.

Q. You went to the hospital then?

A. Yes, sir.

Q. You got off to secure medical attention?

A. Yes, sir.

Q. And have you shipped since that time?

A. Yes, sir.

Q. When did you next ship?

A. If you will allow me to look at my papers I will tell you.

February 11.

Q. 1938? A. 1938.

Mr. Van Dusen: I didn't get the month.

(The answer was read.)

A. On or about.

Q. (By Mr. Martin) And what was the name of that boat? A. The "Gulfbelle". [518]

(Testimony of James P. Blasingame.)

Q. How long did you stay on it?

A. 34 days.

Q. Until? A. March 15.

Q. 1938? A. Yes, sir.

Q. Why did you get off that boat?

A. Well, it was running coastwise. It was running to Providence and it was too fast; making too short trips. It makes about 16 knots an hour and I was trying to get a ship running across.

Q. A ship running——

A. (Interrupting) Across; in foreign.

Q. Now where did you get off the “Gulfbelle”?

A. Port Arthur.

Q. Have you shipped since then?

A. No, sir.

Q. When you left the “Gulfbelle” did you register at the N. M. U. Hall? A. I did.

Q. Did you register also at the Seamen’s Institute?

A. No, sir, I don’t believe I did. I ain’t sure.

Q. Are you registered at the Seamen’s Institute now? A. No, sir.

Q. You are not? [519] A. No, sir.

Q. But you are registered at the N. M. U. Hall?

A. In Galveston.

Q. Oh, in Galveston?

A. In Galveston.

Q. Can you tell us why you didn’t register at the Seamen’s Institute in Port Arthur?

(Testimony of James P. Blasingame.)

A. Well, they got the Texas list down there and I can't ship out on The Texas Company—I don't feel like I can—and the open list, they never call anybody on there, so what is the use of registering.

[520]

Q. Now do I understand that you now live in Galveston?

A. I am registered over there looking for a ship now, yes, sir.

Q. How long have you been over there?

A. Oh, I have been over there about four months; three months.

Q. Four months?

A. Yes, four months approximately.

Q. Are you registered at the N. M. U. Hall at Galveston?

A. Yes, sir.

Q. Do they have a Seamen's Institute at Galveston?

A. They have one, but they don't do no registering there.

Q. They don't?

A. No. You ship out of the union hall. The union ships their ships. I never heard of nobody shipping over there without being a union man.

Q. Union men customarily register only at the N. M. U. Hall in Galveston?

A. Yes, sir. That is about the only ships goes in there is union ships.

Q. Have you contacted Mr. Myers since the time you spoke of? Have you met him on the street?

(Testimony of James P. Blasingame.)

A. Yes, sir, the time I seen him on the street up here was in between one of those trips there; somewheres around there.

Q. You did see him? [521]

A. I believe it was around the first of February. Somewheres around there.

Q. Of 1938? A. Yes, sir.

Q. You had a conversation with him?

A. Yes. I tried to register and he pulled out his book and asked me my name and when I told him my name he closed his book up and went on.

Q. That is the time you told us about before?

A. Yes, sir.

Q. Have you seen him since then?

A. Yes, sir, I have seen him on the streets, but I haven't talked with him.

Q. Have you tried to talk with him?

A. Yes, I have tried to, but he won't speak to me. He used to come over there to Miss Bushnell's. I have seen him there nearly every day.

Q. How much money were you earning on the SS "California"?

A. Eighty-five without overtime.

Q. Without overtime?

A. Without overtime.

Q. Would you like to go back to work for The Texas Company? A. I would.

Q. You would? A. Yes, sir. [522]

Q. Now, Mr. Blasingame, can you tell us how

(Testimony of James P. Blasingame.)

much money you received for your services on the "Atlas"? A. About \$32.00.

Trial Examiner Myers: Have you got any record in your pocket?

A. No, sir, I ain't got no record of how much they paid.

Trial Examiner Myers: Could you supply that tomorrow? Have you got any record at home?

A. No, sir, you don't get it. You get your discharge. Your time for the trip, you don't get any money receipt.

Trial Examiner Myers: Have you any record at home of how much money you earned since you were fired by The Texas Company?

A. No.

Q. (By Mr. Martin) Can you tell us approximately how much you received for your services on the "Dixie Arrow"?

A. The "Dixie Arrow", about, I will say about twenty-three or twenty-four dollars.

Q. Total? A. Total, yes.

Q. In addition to room and board?

A. Room and board always.

Trial Examiner Myers: Will you take out your slip that you had before that gives the dates on which you worked since you have been fired by The Texas Company? [523]

A. You mean my discharges?

Trial Examiner Myers: Maybe that will help

(Testimony of James P. Blasingame.)

you to figure out how much you earned on each trip?

A. I got nine days on the "Atlas". That is about \$27.00 and something like about \$5.00 overtime.

Q. (By Mr. Martin) And on the "Dixie Arrow"?

A. The "Dixie Arrow" is from October 12 to October 21. That is nine days.

Q. About the same rate of pay?

A. No, sir. \$80.00.

Mr. Van Dusen: How much?

A. \$80.00.

Q. (By Mr. Martin) 80? A. Yes, sir.

Trial Examiner Myers: That is the rate of \$80.00 per month, is that what you mean?

A. Yes, sir. That is around \$23.00, isn't it? And probably \$4.00 overtime.

Mr. Van Dusen: How much overtime?

A. Probably \$4.00.

Q. (By Mr. Martin) And subsistence?

A. Board and room.

Q. Board and room in addition?

A. In addition.

Q. Then on the "Socony-Vacuum?" [524]

A. On the "Socony-Vacuum" from November 27 to December 13, which would be 16 days.

Q. At the rate of how much a month?

A. \$80.00 and overtime.

Q. Plus room and board?

(Testimony of James P. Blasingame.)

A. Plus room and board.

Mr. Van Dusen: Plus overtime, did you say?

A. Plus overtime.

Trial Examiner Myers: About how much overtime did you make on the "Socony-Vacuum"?

A. Oh, I would say there was about \$6.00.

Q. (By Mr. Martin) How about the "Gulfbelle"?

A. The "Gulfbelle", I was on there from January 14 to March 17.

Q. At the rate of how much a month?

A. \$90.00.

Q. \$90.00 per month? A. And overtime.

Q. Plus overtime? A. Plus overtime.

Q. Plus room and board?

A. Room and board and overtime.

Trial Examiner Myers: How much overtime did you make on the "Gulfbelle"?

A. On the average of \$10.00 every trip; 15 day trip. [525]

Mr. Van Dusen: \$10.00 each trip?

A. \$10.00 each trip; that is, 15 days.

Trial Examiner Myers: Did you make two trips?

A. No, sir, more than that.

Q. How many trips did you make in that time?

A. I got four trips.

Trial Examiner Myers: And you made about \$40.00 overtime?

A. All together, yes, sir.

(Testimony of James P. Blasingame.)

Mr. Van Dusen: \$40.00 overtime?

A. On that ship.

Mr. Martin: Your witness, Mr. Van Dusen.

Trial Examiner Myers: Well, it is 5:30 now and I think we ought to quit and recess until tomorrow at 9:00 o'clock.

(Whereupon, at 5:30 o'clock p. m., September 14, 1938, the hearing was adjourned to 9:00 o'clock a. m., September 15, 1938. [526])

Proceedings

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Martin: Yes, sir.

Mr. Van Dusen: Yes, sir.

JAMES P. BLASINGAME

resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Van Dusen) Mr. Blasingame, you have been on the sea for approximately ten years, haven't you? A. About ten years.

Q. And you were an A. B. for about seven years? A. Approximately seven years.

Q. The first time you were on a Texas ship was about July 15, 1931, when you were on the SS "Virginia", isn't that correct? A. Yes, sir.

Q. That is what you said yesterday, I believe?

A. That is right.

(Testimony of James P. Blasingame.)

Q. Prior to that time were you on the ships of any other companies? A. Yes, sir.

Q. Do you recall what companies?

A. Gulf Company.

Q. Gulf Company? [528] A. Yes, sir.

Q. Any other company? A. Standard Oil.

Q. Standard Oil?

A. Yes, sir; Atlantic Refinery.

Q. Atlantic Refining Company?

A. Yes, sir.

Q. Any others?

A. And then the Texas ship.

Q. Then the Texas ship? A. Yes, sir.

Q. Now I believe you testified that you left the SS "Virginia" on August 18, 1931, when the boat was tied up in New York in the New York Shipyard. That is correct, is it not?

A. That is correct.

Q. Now it was approximately two years, I believe, before you went back on a Texas ship, isn't that so? You can look at your record.

A. Approximately two years.

Q. Were you on the ships of any other companies during that period of time?

A. Between those two ships?

Q. Yes. A. Yes, sir.

Q. Ships of what other companies? [529]

A. I just mentioned them.

Q. You mean for that period?

A. In between.

(Testimony of James P. Blasingame.)

Q. I see. Well now the companies you name constitute all the companies on whose ships you were employed, is that what you mean?

A. To the best of my remembrance.

Q. Both before you were on the "Virginia" the first time and in this two year period?

A. After I got off the "Virginia" up until I joined the "Virginia" again I was on these three different companies.

Q. Now before you were on the "Virginia" the first time you were on the ships of other companies, were you not? A. I was.

Q. What companies?

A. Standard Oil, Lykes Bros., Gulf Company, Sabine Towing Company. That is all I remember now.

Q. Then you undoubtedly went from one ship of these companies to another ship, or were you on just one ship for those companies, do you remember?

A. I went from one ship to another with the same company, Standard Oil.

Q. Now you left the SS "Virginia" the second time about October 18, 1933, to get some medical attention, isn't that correct? [530]

A. That is right.

Q. And you were out about one month. Were you being treated medically during that one month, or were you on another ship?

A. No, I was treated.

(Testimony of James P. Blasingame.)

Q. Being treated that month?

A. Yes, sir.

Q. On any other ship?

A. Not on any other ship. I was ashore.

Trial Examiner Myers: Were you sick the entire month?

A. Well, I couldn't pass the doctor. You have to pass the doctor before you go on the ship.

Q. You couldn't get the medical certificate until the end of the month?

A. About a month, a month and three days.

Q. (By Mr. Van Dusen) Then you were employed on the barge "Magnolia"?

A. That is right.

Q. Where was that barge located?

A. Down here at Port Arthur, Texas terminal.

Q. Now you left that barge just before Christmas, 1933, when the barge was transferred to New York. That is right, isn't it?

A. It was later transferred to New York after I got off.

Q. Why did you say you left that barge?

A. She was tied up to the west bank. They laid the whole [531] crew off except the captain.

Q. Then about six days later, December 29, you went on the SS "Nevada"?

A. That is right.

Q. And you quit the vessel on April 20, 1934?

A. Yes, sir.

(Testimony of James P. Blasingame.)

Q. You quit of your own accord, did you not?

A. Yes, sir.

Q. Now there is about three years between the time you quit the "Nevada" and the time you went on the SS "California", isn't that right?

A. Approximately three years.

Q. Were you on vessels of any other companies during that period of time?

A. Yes. Let's see, yes, sir, I was on ships.

Q. Will you name the companies, please, or the ships?

A. Atlantic Refinery. That is about the only one, I believe.

Q. You were on the Atlantic Refining Company ships those three years?

A. Yes, sir, about that.

Q. Was it one ship or more than one ship?

A. More than one ship.

Q. Can you name some of the ships?

A. "Bohemia Club", "Tustun", "W. M. Burton", "Frances E. [532] Powell". I believe that is all.

Q. What is that?

A. I believe that is all.

Q. Was that continuous; you were on those ships continuously, without any breaks at all, or did you quit at some time or other?

A. I was making relief trips. I was relieving a man on the majority of them.

Q. You were relieving a man?

(Testimony of James P. Blasingame.)

A. Yes, sir.

Q. Now what was the last ship you were on before you joined the SS "California"?

A. "William Irish."

Q. What was the date you left that ship?

A. I don't remember. I can look it up.

Q. Have you got it with you?

A. Yes, sir. No, I haven't got it with me.

Q. Was it very long before you joined the SS "California"?

A. Approximately a month.

Q. About a month? A. Yes, sir.

Q. Why did you leave the Atlantic Refining Company ship?

A. Called off. I had to go home. My mother was sick.

Q. I see. Where does your mother live?

A. Houston? [533]

Q. Houston, Texas? A. Yes, sir.

Q. Did you say you got on The Texas Company through any particular listing or registration agency? How did you get on The Texas Company ship, The Texas Company ship SS "California"?

A. I was hired by Mr. Meyers.

Q. You went over to see Mr. Meyers?

A. I ran into him on Sixth Street, and I asked him for a job.

Q. You know Mr. Meyers?

A. I know him when I see him.

Q. Did you know him before you joined the SS "California"?

(Testimony of James P. Blasingame.)

A. I knew him when I saw him.

Q. And you asked him for a job on the SS "California"? A. Yes, sir.

Q. How long was it after you asked him that he gave you a job? A. About 24 hours.

Q. About 24 hours? A. Yes, sir.

Q. Now you joined the SS "California" on June 30, 1937? A. Yes, sir.

Q. Isn't that correct? A. Yes, sir. [534]

Q. And you signed the usual shipping articles that you sign on trips of that character?

A. Yes, sir, the next day, at sea.

Q. And you left that vessel on September 21, 1937, isn't that correct?

A. September, about the 19th. [535]

Q. About September 21 or September 19?

A. Nineteen.

Q. Now, Mr. Rosen was on the "California" during all that time was he not?

A. Yes, sir.

Q. And you signed the same articles that Mr. Rosen signed, did you not? A. Yes, sir.

Mr. Van Dusen: May I have these Exhibits 1 to 5, Mr. Reporter.

Q. I show you Respondent's Exhibit No. 1, which is a contract of his shipping articles dated Port Arthur, June 29, 1937, and ask you if you signed those shipping articles?

A. Yes, sir, I signed them.

(Testimony of James P. Blasingame.)

Q. I show you Respondent's Exhibit No. 2, shipping articles dated Port Arthur, July 17, 1937, and ask you if you signed those shipping articles?

A. Yes, sir.

Q. I show you Respondent's Exhibit No. 3, shipping articles dated Port Arthur, August, 1937, and ask you if you signed those shipping articles?

A. Yes, sir.

Q. I show you Respondent's Exhibit No. 4, shipping articles dated Port Arthur, August 21, 1937, and ask you whether you signed those shipping articles? [536]

A. Yes, sir.

Q. Now, those are the shipping articles covering your trip on the SS "California" during the period of time just mentioned, isn't that correct?

A. Yes, sir.

Q. Now, each time you signed new shipping articles, and after the first shipping articles, you were paid off, weren't you?

A. I was paid for the trip, yes, sir.

Q. Paid for the trip? A. Yes, sir.

Q. And on September 19 or 18, approximately that date, when you left the ship you were paid off and given a certificate of discharge, isn't that correct; when you left the "California" in September, 1937, you were given a certificate of discharge, were you not?

A. Yes, sir.

Q. Have you got that with you, Mr. Blasingame?

A. I have.

(The witness produced the certificate.)

(Testimony of James P. Blasingame.)

Q. Now, this certificate of discharge is dated September 19, 1937, is that correct?

A. Yes, sir.

Q. It is signed by Captain Peterson, is it not?

A. I couldn't say. I didn't see him sign it. [537]

Q. Do you know whether that is his signature?

A. It looks——

Trial Examiner Myers: Do you believe it is Captain Peterson's signature?

A. I believe it is.

Q. (By Mr. Van Dusen) Signed by you, Mr. Blasingame? A. Yes, sir.

Mr. Van Dusen: I offer the certificate of discharge in evidence.

Trial Examiner Myers: Any objection?

Mr. Wright: With this statement. We have no exception. These discharges are pretty important to seamen, and I would like either to have the respondent photostat them or take copies and put them in the record, and let this man have the discharge back, because they are important.

Mr. Van Dusen: We will do the same with this as we did with the other certificates.

Mr. Wright: That is all right.

Mr. Van Dusen: We will photostat them as soon as possible, and let them have back the original.

Mr. Wright: All right.

Mr. Martin: No objection.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark the certificate

(Testimony of James P. Blasingame.)

in evidence as Respondent's Exhibit No. 9. The respondent may substitute a photostat in place of the original. [538]

(The document referred was marked Respondent's Exhibit No. 9" for identification, and received in evidence.)

Q. (By Mr. Van Dusen) Mr. Blasingame, were you ever discharged, were you ever what you call fired from any vessel of any company?

A. Yes, sir.

Q. I mean other than the "California"?

A. Yes, sir.

Q. What ships? A. Lykes Bros.

Q. Do you know the name of the ship?

A. West Cresey.

Q. What was the approximate date?

A. About September, 1930.

Q. 1930? A. Yes, sir.

Q. What was the reason for the discharge?

A. Well, it is a long story.

Q. Well——

A. I was watchman, and the mate's orders were not to let anybody in the messroom to eat. I didn't see anybody come aboard myself, and he found a man back there eating breakfast, and I was responsible for it. I didn't see the man come aboard. That is the only time.

Q. Who fired you on that vessel? [539]

(Testimony of James P. Blasingame.)

A. The master I guess.

Q. The master?

A. The mate jumped me, but I guess the captain was really the one that fired me.

Q. What reason did he give?

A. For letting the man get aboard.

Q. Were you ever employed on Lykes Bros. ships since that time? A. Yes, sir.

Q. About when? A. About 1930.

Q. That same year?

A. I believe it was the same year, yes, sir.

Q. Do you know the vessel?

A. The "Elmsport".

Q. Were you ever fired from any other vessel?

A. No, sir, not to my recollection.

Trial Examiner Myers: Except the "California"? A. Except the "California".

Mr. Van Dusen: Well, I meant to exclude that. I am not trying to mislead the witness.

Q. Now, Mr. Blasingame, I believe you testified yesterday that you joined the N. M. U. on October 11, 1937?

A. I took out a new book then, but I have been an N. M. U., rank and file, strike clearance, since October, 1936. [540]

Q. But you said yesterday that you actually joined the N. M. U. on October 11, 1937. Isn't that what you said yesterday?

A. I took out a book then.

(Testimony of James P. Blasingame.)

Q. What did you do when you joined the N. M. U?

Mr. Wright: Mr. Examiner, I am going to object for two reasons. One is that it is immaterial and irrelevant, and the other is that the constitution is in evidence, and it will speak for itself.

Trial Examiner Myers: Will you read Mr. Wright's objection?

(The objection was read by the reporter.)

Mr. Van Dusen: I don't think it is immaterial. I think it is very important. They are claiming that he was discharged for union activity. I think it is essential to know how active he was in union matters.

Mr. Wright: That is a different question, Mr. Examiner: If you want to ask that question I have no objection.

Mr. Van Dusen: No, I said, what did he do.

Mr. Wright: I object to that. If you want to find out about union activity, all right.

Trial Examiner Myers: I sustain the objection.

Mr. Van Dusen: Exception.

Q. Now, you testified yesterday, Mr. Blasingame, that when you signed up on the SS "California" you were pledged to the [541] N. M. U.?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. What do you mean by that, Mr. Blasingame?

Mr. Wright: Mr. Examiner, I think I will ob-

(Testimony of James P. Blasingame.)

ject to this for the same reason, for it is a round-about way of getting to the same point.

Trial Examiner Myers: Overruled.

A. Well, I had a clearance from the N. M. U.

Q. (By Mr. Van Dusen) I don't get that?

A. I had a clearance from the N. M. U.

Q. What do you mean by clearance?

A. Record as being a union man and supporting the N. M. U., and picket card through the strike.

[542]

Q. Had you signed any papers to join the N. M. U.? A. Yes, sir.

Q. What papers?

Mr. Wright: Mr. Examiner, I object to this for the two reasons I objected to the rest of the testimony.

Trial Examiner Myers: I sustain that objection.

Mr. Van Dusen: I am trying to find out what he meant by pledged.

Trial Examiner Myers: That is all right, but what papers did he sign in order to become a union member is immaterial. I will allow certain questions along that line, but I will not allow you to delve into mysticisms of the Union.

Q. (Mr. Van Dusen) Will you explain what you mean by pledged to the N. M. U.

Mr. Wright: I object because it is repetitious.

Mr. Van Dusen: He has not answered.

Trial Examiner Myers: Overruled.

(Testimony of James P. Blasingame.)

A. What was the question again please, sir.

Trial Examiner Myers: You told us yesterday you were pledged to the Union at the time you became a member of the crew of the "California". Now, what did you mean by that? Explain it in your own words.

A. Well, they gave me a clearance card.

Q. Let's take it step by step. You were a member of the I. S. U. at one time? [543]

A. We were all members of the I. S. U.

Q. How did you become a member of the N. M. U.?

A. Well, we broke away from the I. S. U. by calling ourselves the rank and file of the I. S. U.

Q. And you became——

A. Automatically became a member of the N. M. U.

Q. What we would like to know as quickly as possible is what did you mean by being pledged to the N. M. U.?

A. To support the new officials of the rank and file movement.

Q. (By Mr. Van Dusen) Do you mean that you had decided to join the N. M. U., is that what you mean?

A. I had decided to support them as a probationary member.

Q. And you did not actually join until after you left the "California".

(Testimony of James P. Blasingame.)

A. I taken out a new book.

Q. What is that?

A. A new book. I took it out after I came off the "California".

Q. Did you have a book before you went on the "California".

A. Didn't have the new book.

Q. Did you have any book in the N. M. U.?

A. I had a back clearance, which was classified as the Union then.

Q. But you had no book such as what you have in your hands? [544]

A. I didn't have this one.

Q. That is your membership book?

A. Now, yes, sir.

Mr. Wright: Off the record. I think I can explain that for Mr. Van Dusen.

Trial Examiner Myers: Will you explain that for the record.

Mr. Van Dusen: I don't want him to testify.

Trial Examiner Myers: You don't want him to state it in the presence of the witness?

Mr. Van Dusen: I would prefer that he not state it in the presence of the witness.

Trial Examiner Myers: Let's see what he has to say on the record.

Mr. Van Dusen: I would like to hear what Mr. Wright has to say, but I would rather the witness would not hear it.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: Suppose you gentlemen leave the room and see if we can get a stipulation.

(Counsel then retired from the hearing room.)

Q. (By Mr. Van Dusen) Mr. Blasingame, what you mean when you say pledged to the N. M. U. is that at the time you were on the "California" you were a member of the rank and file group of the N. M. U., is that right?

A. Well, I went up for a book before I went on the "California".

Q. What date was that, about? [545]

A. Well, I would say a month before that, about a month before that.

Q. About a month before you went on the "California"?

A. The agent was not in and I couldn't get the book.

Q. And you got what they call a clearance card?

A. No, I had that.

Q. When did you get the clearance card?

A. Right after the strike, sometime.

Q. About when was that, do you remember?

A. Well, I don't know.

Q. Was it in the year, 1937 or 1936?

A. 1937.

Q. And prior to that time you were a member of the I. S. U., is that correct?

A. I was a member of the I. S. U. before 1936, before then.

(Testimony of James P. Blasingame.)

Q. When did you break away from the I. S. U.?

A. About the first part of October, November.

Q. What year? A. 1936.

Q. 1936? A. Yes, sir.

Q. And then you became a member of the rank and file group, is that what you mean, or was it later.

A. I became a member of the rank and file when the strike started. [546]

Q. In the early part of 1937?

A. Latter part of 1936.

Q. Latter part of 1936? A. Yes, sir.

Mr. Wright: May I ask one question?

Mr. Van Dusen: Yes.

Q. (By Mr. Wright) During the time you were on the "California", did you have an I. S. U. rank and file book?

A. I had it but it was not any good.

Q. You had it? A. Yes, sir.

Mr. Wright: That is all. [547]

Q. Mr. Blasingame, I believe you testified that when you went on the "California" the first man you saw was the boatswain, Leslie Thomas?

A. That is the first man I talked to.

Q. And he sent you to the mate so that you might know what duties you were to perform, is that correct? A. That is correct.

Q. Now the mate at that time was Mr. Baldwin?

A. Mr. Baldwin, yes, sir.

(Testimony of James P. Blasingame.)

Q. And he told you in general terms what he expected of you, did he not?

A. First he told me what job was open. I shipped by Mr. Myers as an A. B. and when I got down there it was a quartermaster's job.

Q. Now you don't remember everything that was said at that time? I mean the exact words?

A. Well I remember everything that was said. I know what he said.

Q. What did he say?

A. He said, "Are you an A. B.?"

I said, "Yes, sir. I have been an A. B. approximately ten years," or something like that.

Trial Examiner Myers: Can you talk a little louder?

A. "I have been an A. B. approximately ten years more or less." [547A]

He said, "Well can you steer?"

I said, "Sure I can steer."

He said, "Well there is no A. B. job open. It is a quartermaster's job being called."

I said, "Well I guess I will take it."

Q. (By Mr. Van Dusen) Is that all that was said?

A. No, that ain't all that was said yet.

Q. What else was said?

A. He said, "Okeh," and then I started to go back aft.

Q. What is that?

A. He said, "Okeh," then and I said, "Okeh," too and I started to go aft and he said, "Wait a

(Testimony of James P. Blasingame.)

minute. I want to tell you something." He said, "There are a few things we don't stand for on here. That is, getting drunk, missing watches and agitating Union to the crew back there." He said, "Everything else will be all right if you live up to it, but the minute you start out you are finished."

In those words.

Q. Now who was your immediate superior when you were quartermaster?

A. You mean on watch?

Q. Well, yes, on watch. The boatswain?

A. The second mate.

Q. The second mate? A. Yes, sir. [548]

Q. And above him was the first mate?

A. The chief mate, yes, sir.

Q. Who was the second mate at the time you got on?

A. A fellow by the name of—he was relieving second mate.

Q. Who was that?

A. A fellow by the name of Carlson.

Q. And who was the first mate?

A. Baldwin.

Q. Was he there at the time?

A. What do you mean? Aboard ship?

Q. Yes.

A. He was the man I had the conversation with.

Q. You say he was relieving Rosen, was he not?

A. Rosen.

(Testimony of James P. Blasingame.)

Q. Now at the time you had this conversation with Mr. Baldwin he didn't ask you if you were a member of any union, did he?

A. Not directly right then, no, sir. I don't recollect him saying it. I didn't hear him if he said it. I don't believe he did.

Q. You testified yesterday that you didn't tell anybody that you were a member of a union, is that correct?

A. Sure.

Q. You wanted to keep it a secret, is that so?

A. Well, I don't know whether he asked me or not. If he [549] asked me I never answered him.

Q. Well you didn't tell him?

A. No, sir.

Q. Did anybody else tell him that you were a member of a union?

A. Not that I know of.

Q. You tried to keep it a secret, did you not?

A. I did.

Q. Now I believe you testified that Mr. Baldwin was on the same watch as you when you first got on the "California", is that right?

A. No, sir. He was chief mate. I was on the second mate's watch at sea.

Q. Didn't you say you talked to him nearly every night on your watch?

A. Well when he went back to second mate.

Q. You mean when Rosen got aboard?

A. When Rosen came back, he went back to second mate.

Q. Well how long was it before Rosen came back?

(Testimony of James P. Blasingame.)

A. I guess it was about a trip and a half.

Q. Well during the first trip you didn't have these talks every night with Mr. Baldwin?

A. No, sir, not night time.

Q. Well, you testified yesterday that nearly every night while you were on watch you had talks with Mr. Baldwin. [550] Now, you don't mean during the first trip?

A. No, sir, not night time. He was the four to eight the first trip.

Q. Then it was the second trip?

A. Well I don't remember exactly when he went back to second mate, but it was about a trip and a half.

Q. And about that time he was put on your watch and you had the talks with him every night?

A. Yes, sir, approximately every night.

Q. About how long did these talks last?

A. Well, off and on for four hours.

Q. Four hours? A. Off and on.

Q. Well, you were together, were you not, on that watch? A. We were together.

Q. And quite naturally you would discuss a lot of things, would you not?

A. Yes, sir. Mostly him though.

Q. Mostly what? A. Mostly him.

Q. You mean he talked more than you?

A. Oh, yes.

Q. Well, you are a quiet man, aren't you, Mr. Blasingame?

(Testimony of James P. Blasingame.)

A. Well, I haven't a habit at sea of talking to mates very much. [551]

Q. Well, were you two friendly?

A. Oh, yes.

Q. Well, you got along well together?

A. For a while.

Q. I mean when you had these talks?

A. Oh, yes, sir. Everything was all right then.

Q. You were pretty friendly?

A. Not too friendly, but talking to him.

Q. You mean you didn't like him when he first came on your watch?

A. I didn't love him. I got along with him.

Q. Did you have any reason for not liking him?

A. Yes, sir.

Q. What?

A. Well, he came along after the ship sailed and give me a lot of work that I didn't think I was entitled to do. I put in an extra hour every day cleaning the wheel house up and about four or more hours before we got in port shining brass and such things as that.

Q. Did he make other people work?

A. Yes, the quartermasters, they all had stations.

Q. I mean, did he make them work?

A. Yes, sir.

Q. He made everybody work?

A. Yes, sir. But I had a lot more than any of them. [552]

Q. He was a tough boss then?

(Testimony of James P. Blasingame.)

A. Well, the last man gets the dirty part of it. They had been on there for a while. [553]

Q. How about the other ships you were on? Did any of your second mates make you work hard?

A. Well it all the time wasn't the second mate.

Q. Well whoever was your immediate superior.

A. No, sir.

Q. Would you say Baldwin was the toughest boss you ever had?

A. He was about the toughest one, yes.

Q. Was he a good second mate?

A. I couldn't answer that question. I don't know whether he is a good second mate or a plow hand or what he is.

Q. Now did you say that later on you were on the same watch with Rosen? A. No, sir.

Q. The 4:00 to 8:00 watch? A. Baldwin.

Q. I mean later.

A. I never was on watch with Rosen.

Q. Now you testified, Mr. Blasingame, about an overtime grievance that you and other members of the crew had at that time, didn't you, after Labor Day, 1937? A. Yes, sir.

Q. And you testified that you and Rosen were selected by certain members of the crew to see the captain about it? A. We were. [554]

Q. The captain talked to you about it, did he not? A. Yes, sir.

Q. And after a while he gave you exactly what you wanted, didn't he?

(Testimony of James P. Blasingame.)

A. Not me. He gave the crew what we were asking for.

Q. What?

A. Not only me, but he gave the crew what we were asking for. I don't know whether he gave it to us, but we got it. Somebody gave it to us.

Q. Now at the time you and Rosen went up to see the captain did you tell him that you were a union man or that you were pledged to the N. M. U.? A. He never asked it.

Q. And you didn't tell him then?

A. No. I guess he knew it. He probably knew it.

Q. You didn't tell him though?

A. I don't remember of telling him.

Q. Did you tell anybody to tell him?

A. What?

Q. Did you tell anybody to tell him?

A. Yes, sir, I believe it was brought up later in the conversation, but not the first part of it.

Q. Maybe you don't understand me.

A. Maybe I don't.

Q. Did you tell the captain that you were pledged to the [555] N. M. U. or that you were a member of the rank and file of the I. S. U.?

A. The best I can recollect, we told him we were union men.

Q. You did? A. Yes, sir.

Q. Didn't you testify yesterday that you kept it a secret?

(Testimony of James P. Blasingame.)

A. This is the end of the voyage. At the first part of the voyage it was kept a secret.

Q. You say Labor Day was the end of the voyage? A. Practically the end of it.

Q. Near the end of it, only about two more weeks of it? A. No, sir, about ten days.

Q. And you told him you were a union man?

A. Well Gordon Rosen told him there was a union ship over there and one over here and that we were entitled to it. And the captain said, "Well, those are union ships and this is not," and the best of my recollection, Gordon told him that we were union men too.

Q. Told him that you were union men?

A. Yes, sir, and Captain Peterson told him again that this was no union ship.

Q. Did you tell him you were union men?

A. I didn't myself. Gordon was speaking. [556]

Q. And he said that you were a union man?

A. That we were union men.

Q. Then it was not a secret after that, was it?

A. No, sir.

Q. You said that you attended meetings of the crew aboard the ship, did you not, Mr. Blasingame?

A. Secret meetings, yes, sir. That was before that.

Q. What is that?

A. That is before this happened.

Q. You had no meetings after Labor Day?

(Testimony of James P. Blasingame.)

A. Well, just call a meeting if we wanted to, but it was just——

Q. Did you attend any meetings after Labor Day? A. Secretly, yes, sir.

Q. Well, secretly after——

A. (Interrupting) Well, there wasn't no minutes kept or nothing like that. We just got together and talked about it.

Q. Then you did attend meetings?

A. Yes, sir.

Q. Now you had no trouble seeing Captain Peterson any time you had any grievance or a complaint, did you?

A. Well, that is the only time——

Q. (Interrupting) That is the only time?

A. With the captain.

Q. What is that? [557]

A. That is the only time with the captain, yes, sir.

Q. I see. Now when the "California" docked at Port Arthur on September 19, 1937, between 8:00 and 10:00 in the morning you said that you talked to the chief mate standing by the gangway, did you not? A. I did.

Q. Was anybody present at that time in addition to you and the chief mate?

A. The wireless operator. There was quite a few standing around there. I don't know exactly.

Q. The wireless operator. Anybody else?

(Testimony of James P. Blasingame.)

A. I believe the chief pumpman was standing there.

Q. You mean the first pumpman?

A. The first pumpman.

Q. Anybody else?

A. There was quite a few there but I can't recollect all of them. They were all over the deck.

Q. I mean right close by. Just the wireless operator and the second pumpman?

A. I believe that was all right there at me. Maybe it was. I don't know.

Q. Well, those are the two you remember?

A. Yes, I remember those two.

Q. Now the chief mate then was Rosen; Dave Rosen? A. Dave Rosen. [558]

Q. And he is the man you say told you you were fired? A. Yes, sir.

Q. You say you left the boat between 11:00 and 12:00 o'clock that day, is that right.

A. The best of my remembrance it was somewhere between 11:00 and 12:00.

Q. Now after you talked with Rosen, the chief mate, where did you go?

A. At that time?

Q. Yes, after you talked with him at the gangway? A. I went to my room.

Q. What did you do in your room?

A. Well, I was standing there reading some mail in my door, which is up on deck.

Q. Yes, and what happened?

(Testimony of James P. Blasingame.)

A. Well, in a few minutes the chief mate and the boatswain came along.

Q. That is Rosen who was the chief mate, and who was the boatswain? A. Leslie Thompson.

Q. Yes. Go ahead.

A. They came through there and the boatswain was arguing with him.

Q. Outside your door?

A. Right by my door. [559]

Q. Standing there?

A. No, they were passing by.

Q. Oh, just passing by? A. Yes.

Q. What was said?

A. The mate is hard of hearing and the boatswain was talking loud.

Q. The mate is hard of hearing?

A. Yes. The boatswain was arguing, "you are firing my best man on deck which is Gordon Rosen."

Q. Which is what?

A. "Which is Gordon Rosen."

Q. Yes.

A. The mate said, "I don't give a God damn. I ain't going to have those guys on here," he says, those union men on this ship," and they passed out of my hearing about that time.

Q. Now I believe you testified that when you left the "California" that that day or within a few days after you went over to the N. M. U. Hall to register, is that right?

(Testimony of James P. Blasingame.)

A. Yes, sir. Now that is quite a while ago. I am pretty sure I did.

Q. Well, in any event, you went over there to get your N. M. U. membership book, didn't you?

A. I did. [560]

Q. Because you got that, didn't you, on October 11, 1937? A. Yes, sir.

Q. Which was two or three weeks after you got off the ship, isn't that right?

A. I believe it was. [561]

Q. Now, at that time did you make any complaint about your having been discharged from the SS "California"? A. To who do you mean?

Q. I mean at the time that you went to the N. M. U. office. I mean did you tell them that you left the ship?

A. I told them I got fired. I didn't tell them I left it. I talked to the agent.

Q. Now, when did you first file a complaint with the Labor Board or make complaint to the Labor Board?

Mr. Wright: If he knows.

Q. (By Mr. Van Dusen) If you know?

A. I don't remember the date.

Q. Do you remember? A. No.

Q. Did you ask anybody to file a complaint for you?

A. No, sir. Between ourselves we were going to do it first——

Q. (Interrupting) What is that?

(Testimony of James P. Blasingame.)

A. No, sir, I didn't ask nobody to file no complaint for me.

Q. You haven't asked the Labor Board or anybody to file a complaint for you in this case?

A. No, sir, not directly. We were to do it I believe the first time——

Q. (Interrupting) What did you say?

A. Our intention was to do it all the time.

Q. Your intention was what? [562]

A. To file our cases.

Q. What do you mean by "all the time"?

A. Well, the first chance we got. I believe the N. M. U. agent was taking care of that for us.

Q. Well, now, at the time you went to the N. M. U. office to get your membership book and told them you were fired did you tell them to file a complaint against The Texas Company?

Mr. Wright: Mr. Examiner, I object to the immateriality of the question.

Mr. Van Dusen: Oh, this is not immaterial.

Mr. Wright: It makes no difference how he did it. He did it.

Trial Examiner Myers: Well, there is a complaint on file now. What difference does it make whether he told them then or later on.

Mr. Van Dusen: Well, there is approximately a year involved and I think there is a question of laches and a question of intention and motive.

Trial Examiner Myers: Well, I will sustain the objection.

(Testimony of James P. Blasingame.)

Mr. Van Dusen: Well, I must except to that. Do I take it, Mr. Examiner, from your ruling that I can't inquire at all as to when and how these charges were filed?

Trial Examiner Myers: Well, I will rule on each and every question as we go along.

Mr. Van Dusen: Well, at this point I would like to ask [563] Mr. Martin to make the same stipulation as he did in the previous case.

Mr. Martin: We are willing to do that, Mr. Van Dusen.

Let the record show that I have been requested by counsel for the respondent to state for the record when the fact that James P. Blasingame was discharged from the ship SS "California" on September 19 or thereabouts 1937, was first brought to the attention of the Sixteenth Regional Office of the National Labor Relations Board.

The file reveals that Mr. Blasingame first brought that fact to the attention of the Sixteenth Regional Office in a handwritten letter received June 24, 1938.

Let the record show furthermore that on July 25, 1938, the Sixteenth Regional Office received, and stamped as of that date, a letter from L. C. Ames, representative, National Maritime Union of America, Port Arthur Branch, which, among other things, requested that charges already on file in the Sixteenth Regional Office be amended to include the names of Mr. Blasingame and Mr. Arthur Spencer.

(Testimony of James P. Blasingame.)

Let the record show furthermore that the first formal charge involving the discharge of James P. Blasingame and Arthur Spencer is stamped received at the Sixteenth Regional Office on August 4, 1938. [564]

Mr. Van Dusen: Mr. Examiner, inasmuch as the statement made by counsel for the Labor Board shows that no complaint was filed with the Board for approximately nine months after this witness claims he was discharged, I would now like to ask this witness a series of questions for the purpose of showing two things, one, laches; and, two, the genuineness of the complaint. May I ask those questions?

Trial Examiner Myers: Certainly.

Mr. Martin: Mr. Examiner——

Mr. Van Dusen: I would like to change two, to the fact that the complaint is not genuine.

Mr. Martin: What do you mean by that?

Mr. Van Dusen: I want to show two things, laches, and the fact that the complaint is not genuine.

Mr. Martin: You mean that this man is not bona fide——

Trial Examiner Myers: Let's not have any of this discussion between counsel. I don't think there is any materiality in that contention, but I will let you proceed. This man testified before that after he was fired he went over and complained about

(Testimony of James P. Blasingame.)

the fact to the Union. It might just as well be the Union guilty of laches, and if it was guilty of laches I don't know what bearing it has on the case. And it might have been they were over rushed with complaints, and that they were conferring informally with the Regional Director of the Sixteenth Region, or there might have been [565] hundreds of reasons why they did not file a formal complaint immediately after the complaint was filed by this witness.

Mr. Van Dusen: Well, I consider this important. I merely want the questions in the record.

Trial Examiner Myers: I say I will permit you to go ahead with it, but I don't see the materiality of it.

Mr. Wright: Mr. Examiner, before he does, I want to make an objection. I want to object first to the immateriality and irrelevancy; and the further objection that in so far as laches itself is concerned, the record now speaks for itself.

Trial Examiner Myers: All right. Proceed, Mr. Van Dusen.

Q. (By Mr. Van Dusen) Mr. Blasingame, when did you personally first bring your complaint to the attention of the National Labor Relations Board?

Mr. Wright: Mr. Examiner, I object to that because certainly the record speaks for itself on that point. There is already a letter in evidence on that matter.

(Testimony of James P. Blasingame.)

Mr. Van Dusen: Mr. Martin has just stated what his file shows.

Trial Examiner Myers: I will overrule your objection, Mr. Wright.

A. Well, the best of my remembrance, right after I got off, I complained about it. [566]

Mr. Van Dusen: Mr. Reporter, please read the question.

(The question was read by the reporter.)

A. Personally bring it to it?

Q. Yes, you personally.

A. I believe it was in June.

Q. June, 1938?

A. I believe it was; I am not sure; that is, personally.

Q. Yes, personally. Before that time, did you ask the N. M. U. or anyone else to file a claim on your behalf?

A. I did.

Q. Who did you ask?

A. The officials of the N. M. U.

Q. When did you ask them?

A. When did I ask them?

Q. On what date did you ask them to file a complaint on your behalf?

A. Shortly after I got off the "California". I don't remember the date or the exact time.

Q. You mean at that time you asked the N. M. U. to file——

(Testimony of James P. Blasingame.)

A. To investigate, and if there was any chance, to file charges.

Q. To file charges?

A. Yes, sir. To the best of my knowledge, they have been working on it ever since. [567]

Q. Did you inquire from time to time of the N. M. U. whether they had filed a complaint with the Labor Board? A. Yes.

Q. You did? A. Yes, sir.

Q. About what time?

A. A few months later, the first time I seen any of them.

Q. What is that?

A. A few months later. I don't know when it was.

Q. You were on ships of other companies after you left the SS "California", were you not?

A. I was, yes, sir.

Q. When you returned to Port Arthur from various trips that you took did you inquire of the N. M. U. whether they had filed a complaint with the Labor Board?

A. Between one of those trips. I don't know which one it was.

Q. Had they filed a complaint; do you know of your own knowledge?

A. The man that was in the office, he didn't know. The agent was not in at the time.

Q. Then you yourself brought your complaint to the attention of the Labor Board in June, 1938?

A. I believe that is the month; about that.

(Testimony of James P. Blasingame.)

Q. At that time you were not employed aboard any ship? [568] A. I was not.

Q. How long prior to that time had you been unemployed, prior to June, 1938? A. March.

Q. March?

A. Yes, sir, about March 17.

Q. About March 17?

A. I believe that is it.

Q. What ship was it you left March 17?

A. The "Gulfbell".

Q. "Gulfbell"? A. Yes, sir.

Q. Now, isn't it a fact, Mr. Blasingame, that the reason you filed your complaint personally with the Labor Board was because you were unemployed at the time?

Mr. Wright: Mr. Examiner, we object to the immateriality and irrelevancy of the question. Whether he did it is no concern, so long as he had a right to do it.

Trial Examiner Myers: I will sustain the objection.

Mr. Van Dusen: Exception, please.

Q. Now, Mr. Blasingame, when you left the "California" on September 19, 1937, you said you saw Mr. Meyer on the dock, and that you registered with him, is that correct?

A. That is correct.

Mr. Wright: Mr. Examiner, are we off the subject now of [569] the laches and the genuineness of this claim?

(Testimony of James P. Blasingame.)

Mr. Van Dusen: I won't say that until I have finished.

Trial Examiner Myers: Have you a statement to make?

Mr. Wright: Yes, sir. I want now to make a motion to strike, on the record, all the questions and answers from the time I first made my objection.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Van Dusen) Now, Mr. Blasingame, did you also register at the N. M. U. Hall when you left the "California"?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And how long was it after you left the "California" that you got other employment?

A. I don't remember, sir.

Q. Have you got your papers with you?

A. Yes, sir.

Q. Didn't you testify that in October, on October 12, 1937, you were employed aboard the "Atlas"?

A. Just a minute, and I will make sure whether I said that or not. I joined the "Atlas" September 30.

Q. September 30?

A. Yes, sir. I got off on October 9.

Q. September 30 to October 9?

A. Yes, sir. That was my stay on the "Atlas".

[570]

Q. That was about two weeks after you left the "California", is that right?

(Testimony of James P. Blasingame.)

A. Approximately.

Q. Approximately?

A. Approximately, yes, sir.

Q. Now, your rate of pay on that vessel was \$3.00 per day, plus overtime?

A. Plus overtime, board and room.

Q. Plus overtime, board and room?

A. Yes, sir.

Q. And I believe you said the total amount you received was \$32.00, plus board and room, for that nine days?

A. Approximately \$30.00. I don't know for sure.

Q. Now, when you left that vessel you were employed on the "Dixie Arrow", were you not?

A. Yes, sir.

Q. I believe you testified you were on that ship from October 12 to October 21, is that right?

A. Just a minute. I went aboard the "Dixie Arrow" October 12.

Q. And got off October 21?

A. The twenty-first is correct.

Q. Why did you leave the "Atlas"?

A. It was a relief trip.

Q. Now, on the "Dixie Arrow" your rate of pay was \$80.00 per [571] month?

A. Plus overtime and board.

Q. Plus overtime, and plus room and board?

A. Yes, sir.

Q. Now, the total amount that you received was \$23.00, is that correct? What is the total amount you received for those nine days?

(Testimony of James P. Blasingame.)

A. I would say between \$22.00 and \$24.00.

Q. Plus overtime?

A. Plus overtime, board and room.

Q. I see. Now, the next ship you were on was the Socony-Vacuum? A. Yes, sir.

Q. What date were you hired on that vessel?

A. November 27, 1937.

Q. When did you leave that vessel?

A. December 13, 1937.

Q. And your rate of pay there was \$80.00 per month, plus overtime?

A. Plus overtime, board and room.

Q. What was the rate of overtime?

A. Seventy cents an hour.

Q. What was that approximately per month?

A. Well, I was not on there a month. I will say I made about from \$6.00 to \$10.00. [572]

Q. Per month? A. Per trip.

Q. Per trip? A. Yes, sir.

Q. What was it for the sixteen days?

A. Sixteen days, it would probably be around forty some odd dollars.

Q. Why did you leave that ship?

A. I went to the hospital.

Q. How long were you in the hospital, Mr. Blasingame? A. Nine days I believe.

Q. Now, what was the next ship you were on?

A. The "Gulfbell".

Q. What was the date you were hired on that ship? A. January 14, 1938.

(Testimony of James P. Blasingame.)

Q. Until what time?

A. Until March 17, 1938.

Q. Now, your rate of pay there was \$90.00 per month?

A. \$90.00 per month, plus overtime and board and room.

Q. What was the average overtime per month?

A. Per month, I would say about \$10.00.

Q. \$10.00? A. Yes, sir.

Q. Why did you leave that ship?

A. Well, she was not such a hot ship. She was too fast, and [573] the trips were too short; and I wanted to make a run across.

Q. You left of your own accord then?

A. Yes, sir, I left of my own accord.

Q. Were you able to get a ship going to a foreign port after you left the "Gulfbell"?

A. I could have if I could have been able to register with The Texas Company, but I was not able to do it. [574]

Q. Did you register over there?

A. I tried to, but I couldn't make it.

Q. Where did you try?

A. With Mr. Meyers.

Q. Did you register at the Seamen's Institute?

A. I don't believe I did.

Q. Were you able to find a ship that was not so fast?

A. Well, plenty of them. There are just a few of those fast ones running.

(Testimony of James P. Blasingame.)

Q. You didn't want to get on a fast ship like that one you were on, did you?

A. I wanted to make longer pay days, one thing.

Q. Then you were not looking for fast ships like this one, were you?

A. Well, I had maybe a couple of other reasons to quit that ship, not only that.

Q. What other reasons?

A. Well, one reason, I wanted to go across; and another reason, I wanted to go home for a couple of days; and another reason, I had papers to fix up. I was intending to get my teeth fixed, but I didn't.

Q. You could have stayed on the ship if you wanted to?

A. Yes, sir, I could have stayed there.

Q. And you just voluntarily quit the ship?

A. Yes, sir. [575]

Q. After being unable to find any other ship on which to go what did you do?

A. Well, I have been registered at different ports.

Q. What ports?

A. Here and Galveston, and Texas City.

Q. With the N. M. U., you mean?

A. Oh, yes, N. M. U.

Q. Registered with anybody else?

A. There ain't anybody else, except Mr. Meyers.

Q. You didn't register with the Seamen's Institute?

(Testimony of James P. Blasingame.)

A. Well, that is open list. They don't ship anybody on that.

Q. Did you call up any companies?

A. No, sir.

Q. Do all companies get men from the N. M. U. Hall?

A. No, sir, not all of them. They get them like Meyers. They have got places hid out here in residences.

Q. Did you try to get ships through those places?

A. I don't know any now, except the one Two-Gun Meyers goes to.

Q. You mean you don't know where the other places are?

A. No, sir. I heard where one was at.

Q. Did you try to find it?

A. Well, I asked a few guys on the beach here, but they didn't know for sure. [576]

Q. You didn't try very hard to find out, did you?

A. Well, not too hard.

Q. You wanted to loaf a little bit?

A. No, I didn't want to loaf.

Q. Now what did you say your rate of pay was on the "California"? A. \$85.00.

Q. That is without overtime?

A. That is without overtime.

Q. You did get some overtime on that ship however, did you not?

(Testimony of James P. Blasingame.)

A. I got some tank cleaning money, but no overtime for extra work I was doing.

Q. Did you try to get employment on land, Mr. Blasingame?

A. Well, I didn't look for it, but I have done a few odd jobs.

Q. Were you paid for those jobs?

A. You mean to do them?

Q. Yes. A. Certainly.

Q. About how much have you earned since you left the last ship that you were on?

A. Well, I would say probably a hundred dollars.

Q. \$100.00?

A. Yes, sir; maybe more, or maybe less. I have no record [577] of it.

Q. Now Mr. Blasingame, you shifted around a good deal from ship to ship, didn't you?

A. Yes, sir.

Q. And company to company, is that correct?

A. That is correct.

Q. And when you felt like quitting a particular job you quit it, didn't you?

A. Well, I generally had reason to.

Q. But I mean when you felt that you wanted to quit a job you quit it?

A. All of them but one.

Q. The "California"? A. Yes, sir.

Q. Yes, I realize that. A. Yes, sir.

(Testimony of James P. Blasingame.)

Q. But nobody prevented you from quitting the ship, did they? A. No, sir.

Q. You were an A. B.?

A. That is a habit we have all got. It is not like the navy.

Q. You have an A. B.'s license?

A. Yes, sir.

Q. So that you are qualified to be an A. B. on any of these ships, are you not?

A. In the Merchant Marine, yes, sir.[578]

Q. So that is a common practice among seamen to shift from ship to ship if they want to, isn't that so?

A. Well, it is a habit they have got of having something they have to get off for. Naturally, they are looking for new employment pretty soon.

Q. It is a common practice for seamen to go from ship to ship and company to company, isn't that so?

A. Well, they do do it, yes, sir.

Q. You did it, didn't you? A. Yes, sir.

Q. You know Mr. Rosen, do you not?

A. Gordon Rosen or Dave Rosen?

Q. Gordon Rosen. A. Yes, sir.

Q. Very friendly with him?

A. Well, I have been shipmates with him.

Q. Were you very friendly with him on the "California"?

A. Well, we used to play pinoche together.

Q. Were you friendly with him?

(Testimony of James P. Blasingame.)

Trial Examiner Myers: Were you friendly or not?

A. Yes, sir.

Q. (By Mr. Van Dusen) Did you discuss your complaint with Mr. Rosen? A. Well——

Mr. Wright: Mr. Examiner, I object to the immateriality [579] of the question.

Trial Examiner Myers: I didn't hear your objection.

Mr. Wright: I object to the immateriality of the question.

Trial Examiner Myers: Well, it is a little indefinite. I don't know what complaint you mean.

A. I don't understand it either.

Q. (By Mr. Van Dusen) Well, I will put it this way. Did you discuss your case here with Mr. Rosen prior to the time you went on the stand?

A. Well, I didn't go into details with him.

Q. You discussed it with him?

A. I knew of his, and he knows of mine. I know his.

Q. You compared notes with him didn't you?

A. In the case?

Q. Not here. I mean before you came in here, before you came into the court room, preparing for the case. A. No, sir.

Q. You did not? A. No, sir.

Q. But you discussed it with him, did you not?

A. Well, not in detail, no.

Q. Well, generally? A. Well——

(Testimony of James P. Blasingame.)

Q. You were both on the same ship, were you not? [580]

A. Yes, but this happened after we got off the ship.

Q. What is that?

A. The filing of this case happened after we got off the ship.

Q. But it is based on what happened on board the ship, is it not? A. That is right.

Q. So you did discuss it with him generally, didn't you?

A. Not in general; just knew of it, that is all.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Any redirect examination?

Mr. Martin: Yes, Mr. Examiner.

Redirect Examination

Q. (By Mr. Martin) Mr. Blasingame, you testified on cross examination that you received your job on the SS "California" in 1937 through Mr. Meyers, is that correct?

A. That is right, sir.

Q. At that time were you registered at the Seamen's Institute?

A. No, sir, to the best of my recollection, I was not. I know I was not on the Texas list.

Q. Did you go to Mr. Meyers' office and ask for a job?

A. No, sir. I met him on the street and asked him.

(Testimony of James P. Blasingame.)

Q. Where did you meet him on the street?

A. Over on Sixth Street in front of Mrs. Mitchal's. [581]

Q. Can you give us the address?

A. 235 Sixth Street.

Q. Port Arthur, Texas? A. Yes, sir.

Q. Can you tell us about what time of day this was?

A. It was about 9:00 o'clock in the morning.

Q. What did you say to Mr. Meyers?

A. I goes up to him and I said: "Mr. Meyers, I understand there is an A. B. job open on the 'California'."

Q. What did Mr. Meyers say?

A. He said: "Well, I don't want any A. B. right now. I am looking for a mess boy."

Q. Did he ask you your name?

A. Yes, sir, he asked me my name and phone number.

Q. Had you ever met Mr. Meyers before?

A. No, sir, not that Meyers.

Q. Did you tell him your name?

A. I did.

Q. Did you give him your phone number?

A. I did.

Q. Did he ask for your address?

A. Yes, sir.

Q. Did you give him the address?

A. Yes, sir.

Q. Where were you then staying? [582]

A. 211 Sixth Street.

(Testimony of James P. Blasingame.)

Q. Is that near 235 Sixth Street?

A. About three doors from there.

Q. Which way was Mr. Meyers walking?

A. He was coming out of that house.

Q. Which house?

A. Mrs. Mitchal's house.

Q. Do you know of your own knowledge whether or not he at that time lived there?

A. He did not live there. He was in there looking for a mess boy.

Q. Did he tell you that?

A. Yes, sir. He said he was there looking for a mess boy. He said he was not looking for an A. B. right then; he was looking for a mess boy.

Q. Did he say he had been looking for a mess boy at Mrs. Mitchal's house? A. Yes, sir.

Q. Did Mr. Meyers ask you if you were a member of any union? A. No, sir.

Q. Did he ask you if you had registered at the Seamen's Institute? A. No, sir.

Q. Did he ask you if you had registered at the N. M. U. [583] Hall? A. No, sir.

Q. Did he ask you if you had registered anywhere? A. No, sir.

Q. Did he say anything about the rotary system?

A. No, sir.

Q. Did he ask you if you believed in the rotary system? A. No, sir.

Q. Did you ask him anything about whether he believed in the rotary system? A. No, sir.

(Testimony of James P. Blasingame.)

Q. Why didn't you ask him?

A. Well, he was in a hurry, and was not interested in it, I guess.

Q. You thought he was not interested?

A. I don't think he was interested.

Q. Now when did you next hear from Mr. Meyers after this conversation?

A. The next morning he called me up at the house and asked me did I want the A. B. job on the "California". And I said: "Yes, sir," And he said: "Come on down to the gate. I will be down with a pass for you." [584]

Q. Were you staying at the place that had the telephone number that you had given the day before?

A. I was. I was taking a bath when he called.

Q. Did you answer the telephone that was at the number you had given the day before?

A. Yes, sir.

Q. And you say you told him you would accept the job as A. B. A. Yes, sir.

Q. Then what did you do?

A. Packed up and went down, and, instead of being there, the watchman had a pass for me.

Q. Mr. Blasingame, in this telephone conversation before you left the house, did Mr. Meyers then say anything to you about whether you were registered anywhere? A. No, sir.

Q. Did you meet Mr. Meyer at the gate?

(Testimony of James P. Blasingame.)

A. Not at the gate; down on the dock. The pass was at the gate waiting for me.

Q. In your name? A. In my name.

Q. Did you talk with Mr. Meyer when you met him at the dock or on the dock?

A. I told him I got there just as quick as I could; and he said: "Go on aboard." [585]

Mr. Van Dusen: Mr. Examiner, I have been very patient, but it seems to me this is improper redirect examination. This is all new matter.

Mr. Martin: This matter was opened on cross examination. I think, that being the case, we have ample right to go into it in full.

Trial Examiner Myers: Irrespective of whether it was opened on cross examination, I would like to know the facts and I overrule your objection on that ground.

Mr. Van Dusen: We take an exception, please.

Trial Examiner Myers: You may have an opportunity to cross examine him on this new matter.

Mr. Martin: Does the Examiner care to have me state wherein this subject was opened during cross examination?

Trial Examiner Myers: No.

Q. (By Mr. Martin) When you stood on the dock with him, did Mr. Meyer then ask you if you were registered anywhere? A. No, sir.

Q. Did he say anything about the rotary system?

A. No, sir.

(Testimony of James P. Blasingame.)

Q. Mr. Blasingame, how long after you boarded the ship did she sail?

A. Well, she was in there for steamboat inspection. I believe it was the day after the next day. I believe she was in there two days, and sailed the third morning. [586]

Q. Had you worked during those days?

A. Stood my watch, yes, sir.

Q. When did you sign shipping articles on this trip? A. About——

Trial Examiner Myers: Look at the exhibit.

Mr. Martin: I would like to ask him the question.

A. At sea, some time the next day, I believe it was.

Q. The day after you left the port?

A. Yes, sir.

Q. Three days after you had been working?

A. Yes, sir. But I believe they were dated the day I joined the ship, but we signed them after we were outside.

Trial Examiner Myers: Was it customary to sign the articles the very minute you walked on the boat?

A. It seems to me like it should be.

Q. Well, is it?

A. Yes, sir, it is customary.

Q. Every time you are employed on a ship, as soon as you are employed, you sign these articles.

A. Before you start on a voyage.

Q. (By Mr. Martin) Mr. Blasingame, in your experience of ten years or so at sea on many vessels on a number of lines have you customarily signed

(Testimony of James P. Blasingame.)

shipping articles at sea beginning of each voyage soon after you went aboard the boat? [587]

A. Not each voyage, no, sir.

Q. Shortly after you boarded each boat?

Trial Examiner Myers: He just wants to clear up the facts.

Mr. Van Dusen: Mr. Examiner, I don't think Mr. Martin should testify for him.

Mr. Williams: The objection is that it is a leading question.

Trial Examiner Myers: I know it is leading. Don't lead so much.

A. You do not——

Trial Examiner Myers: Explain it in your own words about those articles.

A. You don't sign articles every trip, provided it is within a month. I believe that is the way it is. Because if you go to Tampa or Miami, and back here, you can make another trip. I think you have got to sign articles at least once every thirty days.

Mr. Martin: Mr. Reporter, will you read the last question and answer, please.

(The question and answer were read by the reporter.)

Q. Well, Mr. Blasingame, in your experience each time you board a new ship, about how long after you have boarded a ship do you sign shipping articles?

Mr. Van Dusen: Mr. Examiner, that is leading,

(Testimony of James P. Blasingame.)

how [588] long after you board a ship do you sign articles.

Trial Examiner Myers: Yes. Reframe your question a little. Will you tell us what you did when you got on the "California" about these articles, and what is the customary thing to do when you do go aboard a new ship regarding articles.

A. You go aboard a new ship, and you are supposed to go up and sign them.

Q. Not what you are supposed to do; what you do. Let's have it.

A. You go up and sign the articles.

Q. Why didn't you do it in this instance, if you are supposed to do it, as soon as you walked on the boat?

A. Well, I guess the mates all wanted to be ashore as much as they could.

Q. Was there anything unusual that you did not sign these articles when you went aboard?

A. I don't remember. I might have signed them down here.

Q. Well, let's take respondent's Exhibit No. 3. You signed here, the seventh man. You believe all those other men, amounting to thirty-eight men, signed after you signed?

A. No, sir. It comes eighth, engineers, and the petty officers, and the A. B.'s, wipers, and they come on down that way, the higher rating up you get.

Q. Quartermaster?

A. Quartermaster, seventh. [589]

(Testimony of James P. Blasingame.)

Q. Did Mitchell sign after you or did you sign before Mitchell? A. I don't know. [590]

Q. Was there a blank space for you to sign?

A. There are blanks all in there.

Trial Examiner Myers: What is the purpose of this, Mr. Martin?

Mr. Martin: There are two purposes, Mr. Examiner. The first is to discover whether people sent on board by Mr. Meyer——

Trial Examiner Myers: I mean about signing the articles?

Mr. Martin: If there was any special way of signing the articles at any special time; and, certainly, to let the fact indicate, to assist whatever law there is on the subject with respect to the exact period of the beginning of the trip, exactly when Mr. Blasingame signed the articles.

Mr. Van Dusen: Mr. Examiner, may I point out that the Federal Statutes require shipping articles for coastwise trips. Now, if that is so, it seems to me that this line of questioning is immaterial.

Mr. Martin: The issue is not whether the law requires articles, but what the law says as to the exact time of the beginning of the trip.

Trial Examiner Myers: Well, go ahead then.

[591]

Q. (By Mr. Martin) Mr. Blasingame, at any time before you got on that boat did Mr. Meyers say anything to you about when you would sign the shipping articles?

(Testimony of James P. Blasingame.)

A. No, sir. That is out of his jurisdiction. He ain't got anything to do with that.

Q. When you entered the boat, did the captain or any officer aboard the ship say anything to you about when you would sign shipping articles?

A. Not until the time came to sign them.

Q. And then what?

A. "Come up and sign the articles." I believe it was the first day at sea or the second day. I ain't sure, but they dated from the day I went aboard the ship and probably signed maybe three days later.

Mr. Martin: Let the record show that opposite the name James P. Blasingame on Respondent's Exhibit No. 1, under the column "Place and time of signing" is the date "ditto" for Port Arthur, "30-37".

Mr. Reporter, please correct that to show that the ditto marks referred to "Port Arthur, 6-," meaning "June".

Mr. Van Dusen: Well, Mr. Examiner, I think this instrument speaks for itself. I don't think Mr. Martin should interpret it. I move to strike out the statement.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception.

Mr. Martin: Let the record show furthermore that at the [592] bottom of the first page of Respondent's Exhibit No. 1 appear the following words, "In witness whereof the said parties have

(Testimony of James P. Blasingame.)

subscribed their names hereto on the days against their respective signatures mentioned," signed, "P. Peterson, Master of The Texas Company," on the 29th day of June, 1937.

Mr. Van Dusen: I make the same motion in respect to that statement.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception.

Q. (By Mr. Martin) Mr. Blasingame, do you remember whether or not you saw Captain Peterson write what he wrote on page one of Respondent's Exhibit No. 1?

Mr. Van Dusen: What was that question?

(The last question was read.)

A. You never see them. When you go up and sign it is laying down like that, (indicating). That is all you ever see.

Q. (By Mr. Martin) Mr. Blasingmae, from your own knowledge, do you know when Captain Peterson wrote what he wrote on page one of Respondent's Exhibit No. 1? A. I don't know.

Q. Mr. Blasingame, when you say that the paper is lying "like that" what do you mean?

A. Well, somebody, the mate or sombeody, is standing there with a fountain pen for you to sign it.

Trial Examiner Myers: You mean it is opened wide? [593] A. Wide open.

Q. (By Mr. Martin) You mean it is opened wide?

(Testimony of James P. Blasingame.)

A. You never get to see the front page.

Mr. Blasingame, you testified on direct examination that during one of your conversations with Mate Baldwin during your watch, he asked you if you were a union man and you denied it, is that correct? A. That is right.

Q. Now, did you have other conversations with Mate Baldwin after that one? A. Yes, sir.

Q. Did he mention rank and filers in any of those subsequent conversations? A. Yes, sir.

Q. And how would he use this term, "rank and filers"? A. "Rank and filer rats."

Q. Can you describe his tone of voice?

A. I don't know what you mean by that.

Trial Examiner Myers: Did you hear the last answer, Mr. Martin?

Mr. Martin: Yes, sir.

Q. (By Mr. Martin) Did he sound as though he didn't like rank and filers?

A. He plainly told me he didn't. He called them rats.

Trial Examiner Myers: He called them rats. Now, what [594] else do you want?

Mr. Martin: I asked the witness to answer.

A. Well, he plainly told me they were rats. I don't think nobody likes rats.

Q. (By Mr. Martin) Now, in these conversations after the one where you denied that you were a union man, in those conversations afterwards, do

(Testimony of James P. Blasingame.)

you believe that Mate Baldwin knew that you were a union man?

A. We went up and had the conversation with the captain, he knew it then.

Trial Examiner Myers: That was the first time he knew it, is that right?

Q. (By Mr. Martin) You believe that was the first time he knew it?

A. Was sure of it. He might have been suspicious.

Mr. Van Dusen: I move to strike it. He is asking whether he knows that someone else believes.

Trial Examiner Myers: Motion denied. It is in now. Let's have no more of it.

Mr. Van Dusen: Exception.

Mr. Martin: Well, Mr. Examiner, just to clarify the record I didn't ask him if he knew somebody else believed something. I asked him if he believed somebody else knew something.

Trial Examiner Myers: I knew it. [595]

Mr. Van Dusen: Well, that is the same thing.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) After you left New York, did you have any more discussions with Mate Baldwin during your watch?

A. They was mostly orders. No more discussions.

Q. You noticed a change in his attitude?

A. Yes, sir, I did. A lot of jobs I wasn't suppose to do.

(Testimony of James P. Blasingame.)

Q. Name some.

A. Well, I was down on deck painting tank tops for one thing.

Q. Who told you to do that?

A. We was at anchor on the bar here and the second mate, Baldwin, told me to do that.

Q. You say you were anchored?

A. Yes, sir. He is my superior officer. And I was changing wind sails, I believe too. I was doing work around on deck I had no business doing. I was supposed to be on the bridge. I scrubbed the wheel house out and he would always find fault and make me come back and do it over then. If the windows wasn't clean enough, I would do that over again. Just trying to make it miserable.

Q. All of this after New York?

A. After we left New York.

Q. Mr. Blasingame, is my understanding correct that a quartermaster does some work on the decks when the ship is tied up [596] at the dock.

A. He has to assist the pumpmen with the valves. [597]

Q. He assists the pumpman with the valves?

A. Yes, sir, and stands gangway watch.

Q. And stands gangway watch. Does he do anything else? Is he supposed to do anything else?

A. He is supposed to watch the cargo load or discharge and that is all. He ain't supposed to do

(Testimony of James P. Blasingame.)

no painting or chipping or nothing like that, to my knowledge.

Q. Before the ship got to New York what duties did you perform as quartermaster when the ship was at dock anywhere?

A. Gangway watch and assist the pumpman and the mate on watch with loading or discharging.

Q. Anything else? A. That is all.

Q. But after the ship left New York?

A. I was doing anything then.

Q. And who told you to do these other things?

A. The mates.

Q. What mates?

A. My mate told me, the second mate, a lot of things he had orders from the chief mate for me to do.

Q. Mate Baldwin told you?

A. Baldwin passed the order on to me.

Q. Did Chief Mate Rosen give you any instructions to do these other things? A. No. [598]

Q. Did Captain Peterson? A. No, sir.

Q. Did Boaswain Thompson?

A. No. I didn't work under him at all.

Q. Now, Mr. Blasingame, from any knowledge that came to your attention before the boat got to New York did you have reason to believe that Captain Peterson knew you were a union man?

A. Before we got to New York?

Q. Yes, sir.

(Testimony of James P. Blasingame.)

A. I don't know whether he did or not. I don't believe he did.

Q. But do you have any information that leads you to that belief? A. No.

Trial Examiner Myers: Well, when you and Rosen went up to see the captain didn't Rosen say in your presence to the captain "We are union men"?

A. That is after we were in New York.

Mr. Martin: I said "before the boat got to New York."

Trial Examiner Myers: Oh, excuse me.

Mr. Martin: The rest is taken care of, Mr. Examiner.

Q. (By Mr. Martin) Had first mate Dave Rosen joined the boat some time before it got to New York?

A. Yes, sir, about a trip and a half, I believe. [599]

Q. Now——

A. (Interrupting) Or one trip. I don't know which.

Q. Now from any knowledge that has come to your attention, do you believe that Dave Rosen knew you were a union man before the boat got to New York?

A. I don't believe he did.

Q. You don't believe he did?

A. No, or probably we wouldn't have got to New York.

(Testimony of James P. Blasingame.)

Q. Did you testify, Mr. Blasingame, that chief mate Rosen was present in the captain's quarters when Gordon Rosen informed the captain that you were union men? A. Yes, sir.

Q. Do you believe that after that moment it was any secret to either the captain or to Dave Rosen that you were a union man? A. No, sir.

Mr. Van Dusen: Mr. Examiner, that is calling for a conclusion.

Trial Examiner Myers: He has answered the question.

Mr. Van Dusen: Well, I thought——

Mr. Martin: We would like to have the record be clear, Mr. Examiner.

Trial Examiner Myers: About what? All right. I will overrule it. It is in now. Let it stay in.

Mr. Van Dusen: I mean, Mr. Examiner, for the future am I [600] to move to strike or to object to the question?

Trial Examiner Myers: Object to the question.

Mr. Van Dusen: I thought you previously said that to facilitate the procedure here we could move to strike out?

Trial Examiner Myers: No, I never said that.

Mr. Pipkin: I believe the record shows that you said——

Trial Examiner Myers: Well, you show it to me in the record. You can show it to me during the lunch hour. Go ahead, Mr. Martin.

Q. (By Mr. Martin) Mr. Blasingame, on cross examination you testified that when you were talk-

(Testimony of James P. Blasingame.)

ing with Dave Rosen at the top of the gang plank and he told you you were fired that the wireless operator and the first pumpman were standing nearby?

Mr. Van Dusen: I object to the question as leading.

Trial Examiner Myers: Well, he is just telling him. He has not asked a question yet.

Mr. Van Dusen: He said "You did testify * * *"

Mr. Martin: Let the record show that my sentence ended with a rising inflection.

Mr. Van Dusen: Yes, indicating the answer.

Mr. Martin: Indicating a question mark.

Trial Examiner Myers: Now wait a minute.

Mr. Van Dusen: I want to object.

Trial Examiner Myers: Please don't ask any more leading [601] questions, because when it comes to valuing the testimony I will have to discount it. It is hard to figure when you lead the witness just what the witness would have testified if the question had not been leading.

Mr. Martin: Do I understand that that objection is sustained?

Trial Examiner Myers: Yes. Will you please reframe the question.

Now he testified on direct and on cross examination that those two men were there with Baldwin and himself besides some other men. That is a fact. Now will you please go ahead and ask him a question.

(Testimony of James P. Blasingame.)

Q. (By Mr. Martin) How far from where you and Rosen were standing was this wireless operator?

A. Approximately from ten to twenty feet; maybe closer and maybe farther. I turned around there and was talking to the mate then. I don't know. They were right behind me.

Q. While the mate was talking did you at any time look at the wireless operator?

A. Not while he was talking, no, sir.

Q. While you were talking to the mate did you at any time look at the wireless operator?

A. Not that I remember.

Q. Now how far from where you were standing was the first pumpman standing? [602]

A. I believe he was standing within probably twenty feet; standing by the manifold of the pump.

Q. By the manifold pump?

A. The manifold from the pump; by the pump room.

Q. Now while Dave Rosen was speaking to you did you at any time look at the first pumpman?

A. Not that I remember.

Q. While you were speaking to Dave Rosen did you at any time look at the first pumpman?

A. Not as I remember; looking at him.

Q. While you were standing there with Dave Rosen did either the wireless operator or the first pumpman make any remarks to either of you?

A. No, sir.

(Testimony of James P. Blasingame.)

Q. Did you see anybody else whom you could identify standing there around there?

A. I believe the second cook was standing there. I ain't sure.

Q. How far from where you were standing was he?

A. He was right there close to the gangway too.

Q. Was he nearer to you or nearer to Dave Rosen?

A. Well, me and Rosen was side by side. He was probably twenty feet too.

Q. You would say he was twenty feet away?

A. Yes, sir. [603]

Q. Now while either you or Rosen was talking did you look at the second cook?

A. No, sir, I didn't look at him; not that I remember looking at him. I might have glanced and saw the man. I don't know.

Q. Mr. Blasingame, after you got off the "Gulf-belle" why didn't you register at the Seamen's Institute?

A. Well, I knew it wasn't no use, because I would never get called no how; that is, on the Texas list.

Q. I see. Did you have any reason for that belief?

A. Well, I tried to register just a little while before I went on the "Belle" and the man, just

(Testimony of James P. Blasingame.)

as soon as I told him my name, he closed his book and said, "I know you," and went on. [604]

Trial Examiner Myers: Well, that is Meyer. That is not the man at the Seamen's Institute is it?

A. No, sir, it ain't the man at the Institute, but that man at the Institute knows who to hire and who to don't hire.

Mr. Van Dusen: I didn't hear that?

A. The man at the Institute now, he knows who to hire and who not to hire. In other words, he has a list of guys that Mr. Meyer don't want now.

Q. (By Mr. Martin) Do you know that of your own information?

A. The best of my knowledge.

Q. But do you know that definitely?

A. Well, I have seen it practiced.

Q. You have seen it in practice? A. Yes.

Q. Have you seen the list?

A. I know guys on the top of the list and they go right on past them and get other men.

Q. Did you ever see the list of people that is kept down there of people not to be hired?

A. No, I never saw that list.

Mr. Van Dusen: Well, I move to strike this testimony since he has not personally seen the list.

A. Not that list.

Trial Examiner Myers: I will grant it.

Mr. Martin: Does that motion go only to mention of list [604-A] or to everything said?

(Testimony of James P. Blasingame.)

Trial Examiner Myers: No, this only goes to that part where he said that the man at the Seamen's Institute has a certain list of people whose names on that list are not employed by The Texas Company. That was your motion, wasn't it, Mr. Van Dusen?

Mr. Van Dusen: Yes. The testimony wherein he stated——

Trial Examiner Myers: That he believed that there is such a list. He is not sure; he does not know of his own knowledge, but he believes it.

Q. (By Mr. Martin) Would you say, Mr. Blasingame, that it is common knowledge among seamen on the beach here that such a list is or is not kept? A. It is knowledge——

Mr. Williams: Now, we object to a leading question of that kind. Ask him for the facts.

Trial Examiner Myers: I sustain it.

Mr. Williams: I have to apologize for making these objections, your Honor.

Trial Examiner Myers: Well, there is no reason for apologizing. I sustain the objection.

Q. (By Mr. Martin) Mr. Blasingame, what do sailors think about this thing?

A. I am sure they all have the same attitude——

Mr. Van Dusen: Just a minute. I object to him asking [605] what the sailors think.

Trial Examiner Myers: I will sustain the objection.

(Testimony of James P. Blasingame.)

Q. (By Mr. Martin) Mr. Blasingame, during your periods of being on the beach at Port Arthur have you talked with a number of sailors about the Seamen's Institute? A. I have.

Q. As a result of those conversations do you have an opinion as to what sailors on the beach at Port Arthur think about the Seamen's Institute?

A. I believe I do.

Mr. Williams: Now, we object to that. They can bring them in here and ask them what their opinion is.

Trial Examiner Myers: I sustain the objection.

Mr. Wright: Mr. Examiner, I don't want to argue about it, but it seems to me that the reputation of the Hall down there, the Seamen's Institute, is subject to inquiry at this time, if this man has talked to seamen and knows the reputation.

Mr. Martin: Mr. Examiner,—

Trial Examiner Myers: I will stand by my ruling. Go ahead.

Q. (By Mr. Martin) Mr. Blasingame, do you know the Seamen's Institute's reputation among seamen on the beach at Port Arthur?

A. Yes, sir. [606]

Mr. Van Dusen: Mr. Examiner, I think this is irrelevant and immaterial. I don't see what the reputation of the Seamen's Institute has to do with this hearing. I object to the question on that ground.

Mr. Martin: This evidence goes to the bona fide

(Testimony of James P. Blasingame.)

attempts of the witness to get a job after he was allegedly fired from The Texas Company ship "California". As such, it is relevant.

Mr. Van Dusen: May I make one more statement?

Trial Examiner Myers: If he gets a job after he is fired it is only to be shown to mitigate the damages that might be due him from the respondent. Now, the mere fact that he didn't make any effort whatsoever to get a job or that he made a lot of efforts to get a job is outside the scope of this complaint.

Mr. Martin: Except that his efforts might affect the mitigation or the lack of mitigation of his damages, because it reflects upon his efforts to secure other employment.

Trial Examiner Myers: I don't think you have to go into that. That is beyond the scope of the complaint and it is all after the dates mentioned in the complaint. There is testimony in the record I believe to the effect that even though the Seamen's Institute or any other employment agency would send a man down to the boat, if the captain did not like the man he would not hire him. So what the Seamen's Institute did or what they were told to do and what kind of men they [607] sent down, I don't see where it comes in, except under the 8-(1) charge where you want to show that the company refused to hire any union men.

Mr. Martin: Or some union men.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: Or some union men.

Mr. Martin: Certain ones, among them, Mr. Blasingame.

Trial Examiner Myers: Well, you have pretty good evidence that Meyers would not hire him. The testimony is that he was going to take his name down and he heard his name and then Meyers closed his book and walked away and wouldn't have anything to do with him. Now, whether he can show that Meyers did that because he knew that Blasingame was a union man or one of certain union men unemployed, that is a different thing.

Q. (By Mr. Martin) Mr. Blasingame, why didn't you register on the open list at the Seamen's Institute?

A. Well, there isn't so many ships shipping over there. Just like The Texas Company, they are shipping from all over town, and I am sure—almost positive—that they don't get no union men. If they called up the Institute they might have got a union man.

Q. Mr. Blasingame, have you had any personal encounter with any official of The Texas Company which led you not to register at the Seamen's Institute after you got off the "California"?

A. No, sir, no other ship but the "California". I don't quite understand that question. [608]

Q. How did you say you got on the "California"? How did you say you obtained the job?

A. By asking Mr. Meyers for it; Two Gun Meyers.

(Testimony of James P. Blasingame.)

Q. Did that fact occur to your mind when you decided not to register at the Seamen's Institute after you got off the "California"?

Mr. Williams: Your Honor, that is a leading question again. You can ask the witness many question; why didn't you register here and why didn't you register there, but don't suggest the reason. I object to the question. It is leading.

Trial Examiner Myers: Sustained.

You didn't register at the Seamen's Institute after you were fired by the company, is that right?

A. No, sir, not on The Texas Company.

Trial Examiner Myers: Why didn't you?

A. Because I registered personally with Mr. Meyers.

Trial Examiner Myers: I beg your pardon. I didn't hear you.

A. Because I registered personally with Mr. Meyers.

Trial Examiner Myers: And you thought it was unnecessary to register down at the Seamen's Institute?

A. My understanding is that he has a list of names. If he can't get one of those men on his book, he calls the Institute for the Texas list. [609]

Trial Examiner Myers: Oh, I see. He has a list of his own and when he can't locate the men on his list, then he will call up the Institute, is that right?

A. That is the way I understood.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: So when you found out that Mr. Meyers wouldn't listen to you, you thought it was no use to register down at the Institute?

A. I knew there was no use registering down at the Institute because if they got a call I would never get the job no how.

Q. (By Mr. Martin) Do you know of any other places to register other than the Seamen's Institute and the Union Hall?

A. No, I don't believe I do without going to a lot of trouble and I didn't know just how to do it.

Q. What do you mean, "cause a lot of trouble"?

A. Well, there would be a lot of calling up, looking for somebody, like Mr. McWilliams up here at the Sabine Hotel. At certain times you can catch him and register.

Q. Can you register at the Sabine Hotel?

A. I don't know whether you can register or not, but he gets your name and phone number, but he is very hard to catch. I have heard that is one way.

Q. At that time did you have any knowledge as to a Union policy about where Union men should register? [610]

Mr. Williams: Now, he is getting back to asking leading questions and putting the answer in the witness' mouth.

Trial Examiner Myers: Well, I will allow it in order to get the evidence.

A. What was the question, please.

(Testimony of James P. Blasingame.)

Trial Examiner Myers: Will you read the question, Mr. Reporter?

(The last question was read.)

A. Yes.

Q. (By Mr. Martin) What was your understanding of the policy?

A. Register at the Union Hall for Union ships that was recognizing the Union.

Q. Any place else?

A. And Seamen's Institute for The Texas Company.

Q. Any place else?

A. That is all I can recall right now.

Q. Did you make any efforts to discover other places? A. To ship or register?

Q. Places to get a job.

A. Not right then, no. Not in Port Arthur.

Q. Why not?

A. Well, I couldn't ship unless we go over to the Union Hall. [611]

Q. Did you try to get a job off the street?

A. No, sir, not after that.

Q. Why not?

A. Against the Union principles, the best of my knowledge.

Q. Did you try to get a job off the docks?

A. No, sir.

Q. Why not? A. The same thing.

Trial Examiner Myers: You don't mean that, do you, Mr. Witness; that it is against Union prin-

(Testimony of James P. Blasingame.)

ciples to look for a job.

A. Well, it is against our policy of the Union to ship off the dock and in that way I mean it.

Trial Examiner Myers: You mean they want you to be hired through the Union Hall so that each man will get a fair chance, is that it?

A. Yes, sir. That is what we advocate.

Trial Examiner Myers: You are supposed to take your turn? A. Take your turn.

Q. (By Mr. Martin) Are there other places in Port Arthur where you can get a job?

A. Not that I know of. If I wait my time.

Q. Boarding houses?

A. Well I don't know boarding houses. [612]

Q. But are there any?

A. Well, yes, there is one boarding house here. That is Mrs. Mitchal's down here. She lives on Houston Avenue now.

Q. Who hires there?

A. The Texas Company does.

Q. What men? A. All departments.

Q. What departments?

A. All departments on the ship.

Q. Who does the hiring for The Texas Company? A. Through there?

Q. Yes. A. Mr. Meyers.

Q. Why didn't you register there?

A. I couldn't see any use in registering, because Mr. Meyers, he always came there to pick up his men and he didn't come there to pick me up.

(Testimony of James P. Blasingame.)

Q. Why not?

A. Because he knows me. He said he did anyhow.

Q. Does the Union have any policy about such places as Mrs. Mitchal's?

Mr. Williams: Now we object to that. I don't think that it is written in the law yet that they can absolutely prevent people from registering at other places where they might get work. [613]

Trial Examiner Myers: I will overrule the objection.

Mr. Martin: Read the question please, Mr. Reporter.

(The last question was read.)

A. I couldn't answer that question.

Q. (By Mr. Martin) Do you understand the question? A. No, I don't understand it.

Q. Does the Union approve of places like Mrs. Mitchal's?

Mr. Van Dusen: Mr. Examiner, I object to that.

Trial Examiner Myers: It has been answered and he said that the Union policy or the custom of the Union was to have no man register outside the Union Hall, so that each and every man would have a job in his turn; that no man should receive more employment than the next man. That is one of the fundamentals of unionism.

Mr. Martin: Thank you, Mr. Examiner. [614]

Trial Examiner Myers: He has testified to it. It

(Testimony of James P. Blasingame.)

is in the record. He has testified to it time and time again.

Mr. Martin: Did I hear a ruling on the last objection?

Trial Examiner Myers: I will sustain the objection. This is all repetitious.

Q. (By Mr. Martin) Mr. Blasingame, do you know what the union thinks of places like Mrs. Mitchal's?

Mr. Van Dusen: I object to that.

Mr. Martin: He can answer "yes" or "no".

Mr. Van Dusen: He can't testify as to what the union thinks.

Mr. Wright: He is a member of it.

Trial Examiner Myers: I don't know why you insist upon pursuing this. I will take judicial notice of it that they frown upon any procedure of registering with anybody except through the union hall. Now we have Mr. Gordon testifying to it and we have this witness who testified to it and we have Ames' testimony.

Mr. Martin: I believe the Examiner is mistaken as to this witness' testimony. I agree about the other witnesses.

Trial Examiner Myers: I asked him that question just a few minutes ago.

Mr. Martin: You didn't ask him about boarding houses.

Trial Examiner Myers: All right. Will you please answer this question, Mr. Witness? [615]

(Testimony of James P. Blasingame.)

Mr. Van Dusen: Well, how about my objection?

Trial Examiner Myers: I will overrule the objection just to get this in the record.

Mr. Van Dusen: Exception.

Trial Examiner Myers: And I have told you there is nothing has to go in this record beyond the date of this man's discharge. Why he registered and why he didn't register in order to get a job is immaterial to this proceeding. The facts are whether this man was discharged for union activities. What he did after he was fired is immaterial except to mitigate the damages, if any.

Will you answer the question?

A. What was it?

Trial Examiner Myers: Read the question.

Mr. Martin: Read my last question.

(The last question was read.)

A. I think they think the same thing that I think about it.

Trial Examiner Myers: And what do you think about it? Let's have it.

A. I think it is a snake ranch.

Trial Examiner Myers: Now regarding registering there in order to get a job with The Texas Company?

A. I don't believe the union advocates them to go there, but if they want to go there they can go there and try to get on a ship for the purpose of organizing it. I believe that [616] is the way I understand it.

(Testimony of James P. Blasingame.)

Mr. Martin: That is all, Mr. Van Dusen.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Blasingame, you didn't put your name on the open list over at the Institute, did you? A. When?

Q. After you left the "Gulfbelle". After you left the "Gulfbelle" in March.

A. I don't recollect. I don't believe I did. I might have.

Q. Do you know what companies get seamen from the open list over there?

A. Well, I have heard of one job going out on that open list in the last year.

Q. Do you know what companies get seamen from that open list?

A. The Sun Company is about the only one I know of and there has been one job in a year's time.

Q. What is that?

A. There has been one job in a year's time that I know of.

Q. You didn't get that job? A. No, sir.

Q. You were not registered.

Trial Examiner Myers: He is registered down in Galveston.

The Witness: I am registered in Galveston.

[617]

Mr. Van Dusen: Maybe he could have gotten that job if he was registered. A. Oh, no.

Q. (By Mr. Van Dusen) Now, Mr. Blasingame,

(Testimony of James P. Blasingame.)

Trial Examiner Myers: I sustain the objection.

Mr. Van Dusen: I except. He said he knew Rosen got a job.

Trial Examiner Myers: I am not interested in what he got after that.

Mr. Van Dusen: Exception, please.

Q. (By Mr. Van Dusen) Mr. Blasingame, are there any companies who do not get their seamen through the N. M. U. Hall?

A. Yes, sir, I believe there are.

Q. What companies?

A. The Texas Company, Sabine Towing Company, Sun Oil, Pure Oil, Atlantic Refinery.

Q. Yes. A. That is all I can recollect.

Q. How do you get jobs on those ships?

A. Well, I don't know. That is something a lot of us would like to know about. [619]

Q. You don't know how men get jobs on those ships? A. I never caught nobody getting one.

Q. Do you want that statement to stand, that you don't know how people get jobs on those ships?

Mr. Wright: We will stipulate it.

Mr. Van Dusen: You can't stipulate his knowledge.

A. I don't know how they really do get them. I have heard, but I don't know it.

Q. Have they got offices here?

A. Some of them have; some of them ain't.

Q. Have you called their offices?

A. No, sir.

(Testimony of James P. Blasingame.)

Q. You haven't called them up?

A. I haven't.

Q. Well, you didn't try to get a job from those companies, did you?

A. No, I didn't try all of them.

Q. What? A. I don't believe I have.

Q. Now, Mr. Blasingame, did you ever take a foreign trip? A. Yes, sir.

Q. It is customary to sign up foreign shipping articles, isn't it, when you go on a foreign trip?

A. Before a Commissioner.

Q. Before a U. S. Commissioner? [620]

A. That is right.

Q. When you make a coastwise trip you usually sign up coastwise shipping articles before the captain of that particular ship, isn't that so?

A. Not necessarily the captain.

Q. The chief mate?

A. Or one of the officers; the wireless operator even.

Q. That is the customary procedure.

A. Well, yes.

Q. Now you have been on a lot of ships. When you go aboard the ship it is customary for you to go either to the captain's quarters or the chief mate's quarters and sign those articles, isn't that correct?

A. Generally they send for you to sign them.

Q. Well, they send for you and then you go to

(Testimony of James P. Blasingame.)

their quarters and sign those articles? That is customary?

A. Somewheres up midships, but I have signed them back aft.

Q. It is customary to sign these articles very shortly after you get on the boat, isn't that so?

A. The best of my knowledge.

Q. Now when your articles come to an end and you are paid off, but you decide to stay on that ship, you usually sign new articles when you are paid off, isn't that correct? Or else get a discharge, isn't that correct?

A. Say that again, please.

[621]

Q. When you reach Port Arthur or some other port and your articles come to an end and you are being paid off, if you want to stay on that ship you usually sign new articles when you are being paid off, isn't that correct?

A. Well, most of the ships the captain has a notice stuck up for you to give him 24 to 48 hours' notice that you are leaving the ship.

Q. I see.

A. And if he ain't got that notice he expects you—you are not finished unless he gives you a discharge. If he don't give you no discharge, you ain't finished.

Q. If you are finished, if you are quitting the ship you get paid off, don't you? And you get a discharge like those discharge certificates that you have, isn't that correct?

A. Yes, sir.

(Testimony of James P. Blasingame.)

Q. Now if you decide to stay on the ship, instead of getting the discharge you sign new articles, isn't that correct?

A. Before you make another trip.

Q. That is right. At the time you are being paid off usually, isn't that correct?

A. At the time you are paid off?

Q. At the time you are being paid off you sign new articles for your next trip?

A. Not exactly at that time. Before you finish the next trip. I have signed articles five days at sea. [622]

Q. Yes, but I say the customary procedure is that when you are being paid off you either get a discharge to leave the ship or else you sign new articles?

A. If you stay in the employ of the ship, yes, sir.

Q. You sign new articles? A. Yes, sir.

Trial Examiner Myers: In other words, for every trip you make you sign new articles, is that it?

A. Yes, sir. That is, if it ain't a short trip to Miami or Tampa; somewhere like that. A lot of those companies don't sign articles for those small trips.

Q. (By Mr. Van Dusen) Now when you went on the SS "California" you signed shipping articles, but you don't know the exact date that you signed them; the exact time, is that correct?

A. I don't know the exact time I signed it, no. It was two or three days after I went aboard.

(Testimony of James P. Blasingame.)

Q. Do you know what date that ship sailed? Do you know what date it pulled out of Port Arthur? The exact date?

A. Let's see? It was about the third, I guess.

Q. About what?

A. I don't know exactly. Probably the third.

Q. The 30th, you mean? June 30? Is that what you mean?

A. I joined it on the 30th and about the 3rd she sailed.

Trial Examiner Myers: The 3rd of July. [623]

A. In the next month.

Mr. Van Dusen: That is September, 1937.

A. I was on that ship in June.

Q. (By Mr. Van Dusen) Pardon me. In June, 1937, you joined the ship? A. Yes, sir.

Q. What date did you go aboard?

A. June 30, 1937, and we laid down here, I believe, it was two days more.

Q. You laid there two days? A. Yes, sir.

Q. Now when did you sign the articles?

A. The first day at sea. We sailed in the morning and I think it was supper time that night we signed them, to the best of my remembrance.

Q. You knew you were going to sign articles? Everybody signs them.

A. Well, that is an old custom.

Mr. Williams: I would like to ask the witness a question.

(Testimony of James P. Blasingame.)

Q. (By Mr. Williams) Did you have tonsilitis when you got off the SS "California"?

A. Did I have what?

Q. Did you have tonsilitis? You had an operation shortly after that. When you got off the "California" on September 21, 1937, did you have tonsilitis then? [624]

A. I don't know. I had tonsils. I don't know whether I had tonsilitis or not.

Q. Well, you had an operation for them, did you not, afterwards? A. Quite a bit later.

Q. After you got off the "Dixie Arrow"?

A. Right after I got off the "Socony-Vacuum".

Q. Were they giving you trouble at that time?

A. When?

Mr. Wright: Which time are you talking about?

A. The "California"?

Q. (By Mr. Williams) The time that you left the "California".

A. No, sir, they were not giving me no trouble.

Q. You had an operation you testified when you left the "Dixie Arrow" on October 12.

A. I was taking doctor's treatment. I didn't have no operation then.

Q. For tonsilitis?

A. I had my tonsils taken out. I went to the doctor. I don't know whether it was tonsilitis or what.

Trial Examiner Myers: Do you know what "tonsilitis" means?

(Testimony of James P. Blasingame.)

A. It is inflamed tonsils, isn't it?

Mr. Williams: That is all. [625]

Mr. Van Dusen: That is all.

Mr. Martin: That is all.

Trial Examiner Myers: It is five minutes to one now. I think we will recess until 2:00 o'clock.

(Thereupon, a recess was taken until 2:00 o'clock p. m.) [626]

Afternoon Session

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock p. m.)

Trial Examiner Myers: Are you ready?

Mr. Martin: Yes, sir. We will call Mr. Buckless.

CLARENCE BUCKLESS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: Give the reporter your name and address, please.

A. Clarence Buckless, 224 Sixth Street, Port Arthur, Texas.

Direct Examination

Q. (By Mr. Martin) Mr. Buckless, are you an able bodied seaman? A. Yes, sir.

Q. How long have you been at sea?

A. Twenty some odd years.

(Testimony of Clarence Buckless.)

Q. How long have you been an able bodied seaman?

A. About twelve years; or about twenty years.

Q. About twenty years?

A. About twenty years.

Q. During your years on the sea, what jobs have you held? A. Boatswain mate in the navy.

Q. I beg pardon.

A. Boatswain mate. That is the highest. [627]

Q. What other jobs?

A. Able bodied seaman, boatswain, quartermaster, cargo ships, freight ships, oil tankers.

Q. Are you a member of the International Seamen's Union? A. Yes, sir.

Q. I beg your pardon? A. Yes, sir.

Q. When did you become a member of the International Seamen's Union? A. June 7, 1937.

Q. Are you speaking of the National Maritime Union? A. Yes, sir.

Q. Are you speaking also of the International Seamen's Union? A. No.

Q. When did you become a member of the International Seamen's Union? A. In 1920.

Q. 1920? A. Yes, sir.

Q. Are you still a member of the I. S. U.?

A. No, sir.

Q. Are you a member of the N. M. U.?

A. Yes, sir.

Q. When did you become a member of the N. M. U.? [628] A. June 7, 1937.

(Testimony of Clarence Buckless.)

Q. While you have been at sea, what lines have you sailed on?

A. Well, I have sailed on several different ones, Standard of New Jersey, Standard of New York, Pan American, Gulf, Texas, Sabine Towing Company, Pure Oil. I have sailed on the Argonaut Line, and Baltimore Mail.

Q. When were you in the navy?

A. I went in the navy June 4, 1915.

Q. When did you leave? A. In 1919.

Q. Have you worked for The Texas Company, Marine Division? A. Yes, sir.

Q. Can you name The Texas Company ships you have been on and the approximate times when you were on them? A. Yes, sir.

Q. Will you please do so?

A. The first one was the "Virginia". That was in 1925, the latter part of 1925 and 1926. I haven't got the correct date on that, when I joined and when I got through.

Q. Can you say about when?

A. Something like September, sometime in September, I believe I joined her, in 1925.

Q. When did you get off, about when?

A. I got off, I believe it was on or about May 1, 1926?

Q. May 1? [629] A. Yes, sir.

Q. Did you say? A. Yes, sir.

Q. Is that a period of approximately seven months, as a minimum? A. Yes, sir.

Q. Then when did you next sail on a Texas Company boat?

(Testimony of Clarence Buckless.)

A. On or about March 23, 1936, until May 1, 1936, on the "Shenandoah."

Q. Mr. Buckless, what was your position on the "Virginia"? A. Boatswain.

Q. And on the "Shenandoah"?

A. Able bodied seaman.

Q. Now, as you continue, will you give us the job, too?

A. Yes, sir. Do you want me to continue now with the rest of the ships?

Q. Yes, please.

A. The next ship was the SS "Washington". I joined her on or about February 20, 1937, and left her in March, the 8th, 1937.

Q. What job?

A. I was on her as quartermaster. The next one was the SS "Ayrian". I went aboard her on or about September 15, 1937, and left her on or about November 13, 1937. Wait a minute. Yes, that is right. I was able bodied seaman on her. [630]

The next one was the SS "Nevada". I went on her on or about November 17, 1937, and left her on or about April 18, 1938. No, I went on her as able bodied seaman and worked for one week or such matter, and was promoted to boatswain, which I stayed as until 1938.

Q. Until you left the boat?

A. Yes, sir. The next ship was the SS "Washington". I joined her on or about June 2, 1938, and left her on or about June 14, 1938. That concludes all those in The Texas Company.

(Testimony of Clarence Buckless.)

Q. What was your job on the "Washington"?

A. Quartermaster.

Q. Mr. Buckless, did you quit the I. S. U. when you joined the N. M. U.?

A. I quit it sometime before.

Q. About when?

A. I dropped out of the I. S. U. in 1934.

Q. In 1934? A. Yes, sir.

Q. Were you a member of a union when you were on the SS "Virginia" back in 1925 and 1926?

A. Yes, sir.

Q. What union? A. I. S. U.

Q. Were you a member of a union when you were on the "Shenandoah" in 1936? [631]

A. No, sir.

Q. Were you a member of a union when you were on the "Washington" in 1937?

A. No, sir.

Q. Did you take any part in the rank and file movement? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Was that in existence at that time?

A. Well, it was just passed then.

Q. When you were on the "Washington" in 1937, were you a pledgee of the N. M. U.?

A. Yes, sir.

Q. Were you a member of the N. M. U. while on the "Ayrian", the "Nevada", and your last time on the "Washington"? A. Yes, sir.

Q. While you were on the "Virginia" did you take any part in union activities? A. No, sir.

(Testimony of Clarence Buckless.)

Q. Why did you leave the "Virginia"?

A. I left on my own accord; no special reason at all. [632]

Q. Did you resign? A. I did.

Q. While you were on the "Shenandoah" did you take any part in any Union activities?

A. No, sir.

Q. Why did you leave the "Shenandoah"?

A. Well, I had a bonus coming.

Q. You had a bonus coming?

A. Yes, sir, the 15th of June.

Q. Were you fired from the "Shenandoah"?

A. No, sir.

Q. You resigned? A. Yes, sir.

Q. While you were on the "Washington" in 1937, did you take any part in any Union activities?

A. No, I don't believe I did; not the first time I was on there.

Q. You took no part?

A. Not the first time I was on her.

Q. Why did you leave the "Washington"?

A. I had a sore eye. I went to Galveston Hospital three weeks.

Q. You got off for medical attention?

A. Yes, sir.

Q. When you were on the "Ayrian" did you take any part in [633] any Union activities?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. What did you do?

A. I called a meeting about four days prior to my discharge, at Port Arthur, Texas.

Q. Without telling us minutely what happened at this meeting, what in general was the meeting about?

A. To encourage the rest of the boys that did not belong to the N. M. U. to join; to show them they would get better conditions.

Q. Were there other members of the N. M. U. aboard the "Ayrian" at that time?

A. Very few.

Q. About how many?

A. About ten I should say.

Q. In all departments? A. Yes, sir.

Q. Who attended this meeting?

A. Just the sailors, firemen, and those off watch in the crew.

Q. Unlicensed personnel?

A. Unlicensed personnel.

Q. All departments? A. Yes, sir.

Q. About how many? [634]

A. I should say twelve or fourteen.

Q. Were all the Union men there?

A. All those off watch.

Q. About how many? A. About eight.

Q. Was the mate there? A. No, sir.

Q. The captain? A. No, sir.

Q. Any officer? A. No officer.

(Testimony of Clarence Buckless.)

Q. Any officer walk by?

A. No, sir, not that I know of.

Q. When you first boarded the "Ayrian" did you have a discussion with the mate?

A. Yes, sir.

Q. What was his name?

A. I really don't know his name right offhand.

Q. Do you remember substantially what was said at this conversation?

A. Yes, just about. It was on a Sunday. I joined the ship Sunday morning, and they turned me to right away, on deck, to turn valves and tighten down dogs on the hatches, cargo hatches, and taking gear down off the booms, cargo booms, topping lifts, blocks, runners, guys and so on. And [635] there was a lot of this work I thought was a little unnecessary on Sunday as we had nice weather, and it could be left on deck until the following day. Well, I heard the mate say to the boatswain: "This is all free, on Sunday. We will get all the work we can out of the boys." So I told them I didn't think that was quite fair, and that we should get overtime for this. And he got down off the hatch and patted me on the shoulder, and he said: "Now, I was only fooling." I said: "Well I don't like the way you were fooling." And I said: "While on the boat we have got to do this if you say so." And I said: "Some day I hope in the near future we will get overtime for this, or time off." So he said he would give me time off for that day.

(Testimony of Clarence Buckless.)

Q. This was the mate?

A. Yes, sir. So the following day was Monday, and he gave me Monday afternoon off.

Q. Did you mention Union to the mate in that discussion?

A. Yes, sir, that is what I said while I was talking with him. I said: "I hope the Union will get strong enough so that we can get overtime and better conditions on these ships."

Q. Did you have any other discussions with any officer while you were on the "Ayrian"?

A. No, sir. [636]

Q. About Union? A. No, sir.

Q. Was your work criticized adversely in any way while you were on the "Ayrian"?

A. No, sir.

Q. Did you miss any watches on the "Ayrian"?

A. No, sir.

Q. Did you leave the "Ayrian" of your own will? A. No, sir.

Q. Were you fired? A. Yes, sir.

Q. Who fired you? A. The mate.

Q. When?

A. On or about November 13, 1937.

Q. Do you remember the discussion?

A. Yes.

Q. Substantially what was said?

A. Well, the boatswain told me first that I was fired. I said: "Who is firing me, you or the mate?" And he said the mate was. So I asked the

(Testimony of Clarence Buckless.)

mate what he was firing me for. So he didn't want to tell me. He said he didn't have to tell me.

Q. He said: "I don't have to tell you"?

A. Yes. [637]

Q. Did you talk to the captain?

A. No, sir.

Q. Was anybody else fired at that time?

A. No, sir, not to my knowledge.

Q. Did anybody else leave the boat at that time for good? A. Not that I know of.

Q. Do you remember the name of the captain of the "Ayrian" at that time?

A. Karlson, spelled with a "k".

Q. Karlson?

A. Yes, sir, starts with a "k".

Q. Do you remember the name of the mate, first mate? A. No.

Q. Second mate?

A. His first name was Charlie.

Trial Examiner Myers: First mate or second mate? A. Second mate.

Q. Boatswain?

A. No. The third mate's name was J. D. Holmes.

Q. Now when did you next work for The Texas Company? A. On the SS "Nevada."

Q. While you were on the SS "Nevada" how many trips did you take?

A. I made about seven trips in all, I believe. I couldn't say offhand, but I think it was around seven trips. [638]

(Testimony of Clarence Buckless.)

Q. Where did you go on the first trip?

A. I went aboard her in Galveston, and from there to Corpus Christi, and back to Port Arthur.

Q. And about what date did you leave Galveston?

A. About the 20th of November, 1938.

Trial Examiner Myers: What?

A. 1937.

Q. (By Mr. Martin) In what capacity did you ship on the "Nevada"

A. Able-bodied seaman.

Q. How long did you serve as able-bodied seaman?

A. I really don't know. It was about five to seven days.

Q. What was the rate of pay as able-bodied seaman?

A. I forget now, whether it was eighty—eighty dollars I believe.

Q. Why did you discontinue being an A. B.?

A. I was promoted to boatswain.

Q. Tell us about that.

A. Well, on the arrival at Port Arthur we had just got tied up to the dock, and the mate called me and asked me if I wanted to go boatswain. And I told him: "You have one, haven't you?" And he said: "I did have, but I fired him." And he said: "If you want the job, say so. If not, I will get a man from the shore." So I took the job. [639]

Q. What was the name of the boatswain he fired?

A. Pleasant Linville.

(Testimony of Clarence Buckless.)

Q. Did the mate tell you why he fired him?

A. No, sir.

Q. Did you ever learn from the mate?

A. No, sir.

Q. Did you ever learn from an officer of the ship?

A. Well, I heard a whole lot of rumors.

Q. Did any officer of the ship ever tell you?

A. Yes, sir.

Q. Who? A. The second mate.

Q. What was the reason given?

A. That he had not been going to sea but about a year, eight months to a year; and he only had an ordinary certificate; he didn't know how to splice; he didn't know how to put up gear on the booms, topping lift, or anything like that.

Q. Did you understand from the second mate that at that time Mr. Pleasant Linville was considered an incompetent sailor?

A. I learned it from him.

Q. From whom? A. The second mate.

Q. Now, were there other A. B.'s aboard the boat when you were promoted to boatswain?

A. Yes, sir. [640]

Q. How many? A. Two.

Trial Examiner Myers: Excluding the quartermaster?

A. Yes, sir, excluding the quartermaster.

Q. (By Mr. Martin) Where did you go on your second trip with the "Nevada"?

(Testimony of Clarence Buckless.)

A. To New Haven, Connecticut.

Q. And then where?

A. And returned to Houston, Texas.

Q. And then?

A. And loaded for Boston, Massachusetts. On the return trip from Boston we went to Cat Island, and from Cat Island to Fort Arthur.

Q. Was that all one trip?

A. No, that was the trip to Houston. They paid off there, and signed on again from Houston to Boston, and from Boston to Cat Island, and from Cat Island to Port Arthur.

Trial Examiner Myers: Where is Cat Island?

A. Cat Island is on the coast of Louisiana, near the Mississippi River, I believe. They call it Port Texaco, better known as Cat Island.

Q. (By Mr. Martin) That would be the third and fourth trips, would it? A. Yes, sir.

Q. Did you participate in any union activities during those [641] trips?

A. Yes, sir. On the first trip north to New Haven, Connecticut, I called a meeting.

Q. What for?

A. For better conditions and a lot of things needed on the ship. And I was made delegate at this meeting. And during the meeting there were several things asked for. There was bath buckets, screens for the ports, and other things I perhaps can't mention right now; and taking care of the bathroom, and keeping it clean.

(Testimony of Clarence Buckless.)

Q. Do I understand you that those things were brought out at the meeting?

A. Yes, sir, and they were voted on, and voted that I could see the mate about them. And the following day I spoke to the mate at noon time and talked to him in his room. And I told him that we had a meeting last night, an N. M. U. meeting, in the messroom, and that the boys had delegated me to ask him for those few things, such as bath buckets, screens for the ports, and keeping the bath-room clean.

Q. What was the name of the mate?

A. Tranberg, Carl Tranberg.

Q. First mate? A. Yes, sir.

Q. Do you remember what he made reply?

A. He said: "Haven't the boys got buckets?"

[642]

And I said: "Some of them have, and some of them haven't."

I said: "The only buckets they have are paint buckets that I have washed out with kerosene, cleaned them out for them, about three of them." And that is all they had to take a bath in, paint buckets. And we never got the buckets as long as I was on the ship, six months. Whether they got them yet or not I don't know.

Q. Do you remember anything else the mate said?

A. Well, he said: "If you get buckets they will

(Testimony of Clarence Buckless.)

only destroy them, anyway."

And I told him: "I am only asking you as a delegate of the deck department now, and that is all I can do."

Q. Were you a delegate of the deck department? A. Yes, sir.

Q. Only? A. Only.

Q. Now, that day did you have a conversation with the first pumpman?

A. Yes, sir, I believe I did. We were talking that night about shower baths.

Q. That is, the night before?

A. Yes, sir, at the meeting. We didn't want to bring up too many things at once. So I spoke to the pumpman and asked him if he could fix up some shower baths; and he said he could if the chief engineer would give him the material. So the [643] next morning he asked the chief engineer for the material; and he said he would like to give it to him——

Mr. Van Dusen: Just a minute. Were you present when he told that to the pumpman?

A. No, sir.

Mr. Van Dusen: I object to the answer.

Trial Examiner Myers: Sustained. [644]

Q. After the first pumpman returned from the chief engineer what did he say?

A. He said that the chief engineer has the material——

Mr. Van Dusen: The same objection, Mr. Ex-

(Testimony of Clarence Buckless.)

aminer, this is hearsay. He was not present when the chief engineer said it.

Trial Examiner Myers: Well, the question is what did the first pumpman say to him. Objection overruled.

Mr. Van Dusen: Exception.

A. The first pumpman said that the—the first pumpman told me the chief engineer said if he fixed it up the way that he wanted to do it he was afraid that some of the boys might get burned with steam. Therefore he couldn't permit him to have the material.

Q. (By Mr. Martin) So shower baths were out then? A. Yes.

Q. Do you remember where the boat went on its fifth trip while you were on it?

A. On the fifth trip? That was when we came back from Cat Island and discharged and loaded for Spain.

Q. Did the boat go to Spain? A. Yes, sir.

Q. Approximately how long was the boat at sea from port to port?

A. Around 23 to 25 days. [645]

Q. During that period did you have any union meetings?

A. Yes, sir. We had one every week.

Q. About how many in all?

A. I should say around six.

Q. On the way over?

A. Over and back.

Q. How about on the way over?

(Testimony of Clarence Buckless.)

A. About three.

Q. Who called the meetings? A. I did.

Q. Who presided at the meetings?

A. All the unlicensed personnel.

Q. Those people were present?

A. Yes, sir, all men off of watch.

Trial Examiner Myers: Who presided? Do you know?

Q. (By Mr. Martin) Who conducted the meetings?

A. Well, different ones. Gordon Rosen was chairman most of the time, Lee Arnold and the steward.

Q. Were you? A. No, sir.

Q. Where were these meetings held?

A. In the sailors' mess room.

Q. When were they held?

A. They was held of an evening or on Saturday afternoon or Sunday whenever—we rotated them so that the men on watch [646] on this watch here would be able to be at the next meeting. If we had them on the 4:00 to 8:00 watch, then we would have the next meeting on the 8:00 to 12:00 so that each watch could attend the meeting each time we held it.

Q. Well, do I understand that one shift would miss a meeting each week? A. Yes, sir.

Q. Do I understand that you tried to plan the meetings so that the other two shifts could attend each meeting? A. Yes, sir.

Q. Who attended the meetings on Saturday and Sunday?

(Testimony of Clarence Buckless.)

A. Well, it will work out practically the same, because Saturday afternoon and Sunday the men don't have to work; that is, there is no working done at all, only standing watches as they would at night.

Q. Would more attend on Saturday and Sunday?
A. No, sir, the same amount.

Q. What was your job on the boat at this time?

A. Boatswain.

Q. What are the boatswain's duties on Saturday afternoon and Sunday on the water?

A. Wash dirty clothes.

Trial Examiner Myers: That wasn't a duty, was it?

A. There is no duties at all to perform for the boatswain.

Q. (By Mr. Martin) No duties? [647]

A. No, sir.

Q. Did you ever see the captain while one of these meetings was being held?

A. Yes, sir.

Q. Where was the captain?

A. He came back to the mess room—well, he came back aft looking for the chief pumpman, the first pumpman. He couldn't find him in his room. So he walked around the passageways until he came to the mess room and he found us all gathered in there and he asked if the first pumpman was in there, Lee Holmes.

Lee spoke up and he says, "Yes."

(Testimony of Clarence Buckless.)

So he asked him to come out on deck. I believe he had some work for him to do.

Q. Did Lee go out? A. Lee did.

Q. Did the captain leave? A. Yes, sir.

Q. Do you remember who was presiding at that meeting? Who was chairman of the meeting?

A. I believe the steward was.

Q. Are you sure?

A. I am not positive, no, sir.

Q. What was the steward's name?

A. Jensen, I believe.

Q. How many ports did the boat stop at in Spain? [648] A. Three.

Q. Can you name them in order?

A. I believe so. La Corona was the first one, Bilbao was the second, and Pasjes was the third.

Q. While the boat was at any of these ports did you have any discussion or discussions with any officer or officers concerning grievances?

A. Well, we did. I did.

Q. You personally?

A. Well, we all—we really all got together on this. The captain didn't want to give us shore leave.

Q. Where?

A. At Bilbao. So we called a little meeting and delegated, I believe it was Rosen and an ordinary seaman—I forget his name now—to talk to the captain.

Q. Did you talk to the captain?

(Testimony of Clarence Buckless.)

A. No, sir.

Q. Did you talk with the mate? A. Yes.

Q. About that? A. Yes sir.

Q. Do you remember that conversation?

A. Well, I asked him if he thought we were going to get shore leave and he says, "I don't know. Why don't you ask the captain?" He says, "He will give it to you, I think, if you [649] ask him."

That was about all that was said.

Q. Did you inform the mate whether you were speaking as boatswain or as an individual or as a representative of the crew?

A. Well, no. At that time we were only carrying on the conversation that time ourselves.

Q. Did the "Nevada" return from Spain to Port Arthur?

A. No, sir. Cat Island or Port Texaco.

Q. And from there?

A. From there to Port Arthur.

Q. Did you have any union meetings on this trip from Spain to Port Arthur?

A. Yes, sir.

Q. About how many? A. About three.

Q. Who called them? A. I did.

Q. Who presided?

A. Well, one of those three that I mentioned, Lee Arnold, Gordon Rosen, or the steward Jensen.

Q. Were any of the officers of the ship present?

A. No, sir.

(Testimony of Clarence Buckless.)

Q. Did you have a meeting between Cat Island and Port Arthur? [650]

A. We had a small meeting or a discussion more over overtime at Cat Island. I believe that was on Saturday afternoon and Sunday there. The captain refused to pay us overtime. First of all was that the mate came around checking our overtime. He asked Gordon Rosen, I believe, first. He was standing there beside me on the forward part of the ship. We were down in the No. 1 cargo hold, and he asked him how much overtime he had. So Gordon give him the number of hours he had and he said that wasn't right. So he said he had so many hours and Gordon asked him, he says, "How about that overtime at Cat Island?"

And he says, "I don't believe you get that."

So he turned to me and asked me how much overtime I had. [651]

Q. The mate?

A. Yes, sir.

I said, "I have eleven hours at Cat Island and three hours, I believe, besides that." I forget just how much I did have. I know I had eleven hours there.

"Well," he says, "You will have to see the captain about that I think."

And he went back aft to check up with the rest of the boys in the forecastle; that is, those off watch, and they all asked for it too. So on his way back—well, he had went up and seen the captain in the meantime and he came down from the

(Testimony of Clarence Buckless.)

bridge and he told me the captain wanted to see me about this overtime. So I went up and talked with him.

He said, "What do you mean putting in for overtime at Cat Island?"

I said, "Well, it was Saturday afternoon and Sunday and we were all on watch." I said, "The company says that they will pay it." I said, "I think we should have it."

"Well," he said, "I am not going to pay it."

"Well," I said, "Everybody in the crew all expects it."

"Well," he says, "You go back aft and tell all those who expect it to come up here and see me."

So I went back and told all the boys who expected this overtime to come up on the bridge, which we did.

Before we went up we decided on spokesmen; it was Gordon [652] Rosen, Lee Arnold and myself was appointed spokesmen for the crew.

Well I started in. I says, "Here is the boys. The boys is all here now, Captain. I believe we would like to hear what you have to say about the overtime."

Well he said he wasn't going to pay it.

And then Gordon Rosen spoke up and he said it was in the Texas rules in the messroom that they would pay overtime on Saturday afternoon and Sunday with the ship at anchor, and then Lee Arn-

(Testimony of Clarence Buckless.)

old said something—I forget just what he did say—and the captain asked him if he could see good.

He said, “Yes, sir.”

So he took him in the chart room and showed him where we were lying approximately eight miles at sea.

Q. When? A. At Cat Island.

Q. At Cat Island?

A. Yes, sir, as I seen myself on the chart and Gordon Rosen. Well, the whole three of us was there and seen it.

Q. What did the working rules provide if the boat was at sea?

A. It said at anchor Saturday afternoon and Sunday was to be paid and that is what we were, at anchor.

Trial Examiner Myers: You were at anchor?

A. Yes, sir. This was the day before we got into Port Arthur. [653] On the arrival I believe the captain talked with Captain Hand about it and the following day we were up in Port Neches and the captain called the crew up then and he said, “Boys, I have been permitted——”

No. “I have been——”

Well, he was told to pay the overtime, which he did, but he said that I wasn’t supposed to get any. He says, “A boatswain is off Saturday afternoon and Sunday.”

“Well,” I said, “The mate had me on watch. He put me on watch Friday night and he knocked me

(Testimony of Clarence Buckless.)

off at noon." I said, "He said, 'You go on the 4:00 to 8:00 watch and continue on it until we leave Cat Island.' " Which I did, and we left there on Sunday afternoon. That give me Saturday evening, 4:00 to 8:00, Sunday morning, 4:00 to 8:00, and in the afternoon three hours, which give me eleven hours at Cat Island. So then he paid me then when I told him I was on watch at that time.

That concluded that.

Mr. Pipkin: Was the answer that he did pay you? A. Yes, sir.

Q. (By Mr. Martin) What was the captain's name? A. Swanson.

Q. Mr. Buckless, are you sure this discussion or series of discussions took place at the end of the Spanish trip?

A. No. No, I don't believe it did. I think that was the [654] following trip after the Spanish trip that this took place.

Q. Where did you go on that trip? The trip following the Spanish trip, where did you go? Where did you go following the Spanish trip?

A. We went to New Haven, Connecticut, I believe. I am pretty sure it was New Haven, Connecticut.

Q. And then? A. And then to Cat Island.

Q. And then?

A. Port Arthur, and that was the trip that we had the discussion on this overtime.

(Testimony of Clarence Buckless.)

Q. Was there any discussion that trip about retroactive wages? A. Just——

Q. (Interrupting) Will you please relate it?

A. On the way north the mate told me first that we had back pay coming to us; that the captain was going to pay us that evening. So I sent the rumor around then to all the boys that we were going to get our back pay on that Spanish trip this evening. Well, it came evening and no reply from the Captain. The next day everybody was all upset over it and we found out that it was just the licensed personnel department was the ones that got it, the mates, and engineers was the only men that got it. So then we called a meeting.

Q. Who called the meeting? [655]

A. I did; to see what the rest of the crew thought of it. They thought of writing a letter, a telegram, or going to the captain to see about it. So they suggested that two delegates go up to the captain and ask him what he knew about it or if he had any authority to pay us or not to pay us. So Lee Holmes was delegate for the engineer's department and him and I was elected to go up to see the captain. [656]

Q. You were representing the deck department?

A. Yes, sir, I was representing the deck department.

Though I went up and asked him or Lee Arnold and I asked him and he said he had no authority to give us any back pay, but he did the engineers and

(Testimony of Clarence Buckless.)

mates, the licensed personnel. So then we had another meeting. I called it and at this meeting decided to send a telegram to Mr. Roney, which we did.

Q. What did the telegram say?

A. Well, I really couldn't word it right now and I have no duplicate of it.

Q. What was it about?

A. Well, we were asking him why we didn't get our back pay as well as sailors on the other ships of the same company were getting. They were already getting it and he hadn't gotten it and we hadn't gotten it and I thought that we should get it and all the rest of the crew did.

Q. How was the telegram signed?

A. Signed, "Crew SS 'Nevada'."

Q. Where did you send it from?

A. I sent it from the telegraph office in New Haven, Connecticut, myself.

Q. To whom was it addressed?

A. J. P. Roney.

Q. Do you remember the address? [657]

A. Not exactly. Marine Department.

Q. In what city?

A. In New York. I can't think of it right now.

On the return trip to Port Arthur we got a letter from Mr. Roney in answer to that telegram and he said——

Mr. Van Dusen: Just a minute. I think the letter is the best evidence.

(Testimony of Clarence Buckless.)

A. I believe the letter is still aboard the "Nevada".

Trial Examiner Myers: I beg your pardon.

A. I believe the letter is still aboard the "Nevada", or was.

Mr. Van Dusen: Well, Mr. Buckless just testified that he got a reply from Mr. Roney to his telegram.

Trial Examiner Myers: Well, have you got a copy of the letter? He says he hasn't got the original.

Mr. Van Dusen: Well, what did you do with the original, Mr. Buckless? Wasn't it addressed to the crew?

A. It was addressed to the crew. Therefore, I had no right to take it off the ship.

Mr. Van Dusen: Well, how did it get to you? Did you see it?

A. Certainly.

Mr. Van Dusen: What did you do with it? Who showed it to you?

A. I opened it myself. Me, being delegate for the crew or for the deck department, I received the letter and opened [658] it and read it at the following meeting.

Mr. Van Dusen: To whom did you deliver it then?

A. I put it on the bulletin board so that everybody could see it.

Mr. Van Dusen: You left it on the bulletin board?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Mr. Van Dusen: I never saw the letter.

Trial Examiner Myers: Will you tell us what you remember of the letter, Mr. Buckless?

A. Well, the letter was addressed to the crew of the SS "Nevada" and he stated some words in there that I couldn't remember at all.

Trial Examiner Myers: What did he tell you? That you couldn't get the fifty dollars or couldn't get the increase in the wages rather?

A. The increase in the wages, he said we couldn't get it. That we would get it the first of April and not until then.

Mr. Van Dusen: I didn't hear that.

A. We would get it the first of April and not until then.

Mr. Van Dusen: Oh, that you would get it.

A. That our raise in pay would start the first of April; that the licensed personnel, they looked after them first.

Mr. Van Dusen: Do you know the approximate date of that letter?

A. No, I really don't. No, I couldn't say. [659]

Mr. Van Dusen: Well, do you know the date you sent the telegram signed "SS 'Nevada' "?

A. No, I don't.

Trial Examiner Myers: Do you know what month it was?

A. I could tell very near it.

Mr. Van Dusen: It must have been prior to April if he said——

(Testimony of Clarence Buckless.)

A. (Interrupting) It was in March, I believe.

Mr. Van Dusen: March?

A. The last of March or the first of April.

Mr. Van Dusen: Of this year? 1938?

A. Yes, sir.

Q. (By Mr. Martin) Now, Mr. Buckless, to go back to the return from Spain on your Spanish trip, when the boat was coming back from Spain to the United States, did you have any discussions concerning bonus? A. Yes, sir.

Q. Tell us about those.

A. Well, we had heard or knew of other ships going in the war zone was getting fifty dollars a port. We thought that we were entitled to it. So, on the return from Spain we asked Captain Hand if we would get it.

He said, "No," only getting fifty dollars a trip.

Q. Did you have a meeting concerning this?

A. Yes, sir. [660]

Q. What did you decide to do at that meeting?

A. Well, we had the meeting and Gordon Rosen, Lee Holmes, Lee Arnold and myself were delegated to contact the captain, Captain Hand as we called him.

Q. Captain Hand?

A. Yes, sir, about the bonus.

Q. I beg your pardon.

A. About the bonus.

Q. Did you talk with the captain of the boat about it? A. No, sir.

(Testimony of Clarence Buckless.)

Q. Did you talk with the mate about it?

A. No, sir.

Q. But you talked with Captain Hand about it?

A. Yes, sir.

Q. Who was present?

A. Gordon Rosen, Lee Arnold, and Lee Holmes.

Q. And yourself? A. Yes, sir.

Q. And Captain Hand? A. Yes, sir.

Q. Anybody else?

A. I believe the wireless operator.

Q. When did the conversation take place?

A. On the salon deck of the SS "Nevada".

Q. Where was the SS "Nevada"? [661]

A. Tied up at the dock at Texas Island, Port Arthur, Texas.

Q. At the conclusion of the Spanish trip?

A. Yes, sir.

Q. Do you remember substantially what was said in that conversation? A. Yes.

Q. Please relate it.

A. Captain Hand then told us that we had a raise in pay. Well, I couldn't remember now just all the coincidences that did happen.

Q. Well, what did you ask for in this conversation? A. We asked for \$50.00 a port.

Q. Instead of what?

A. Instead of \$50.00 a trip.

Q. Did Captain Hand agree that you could have your request? A. No.

Q. He refused it?

(Testimony of Clarence Buckless.)

A. He refused it but he said he would give it if other companies were giving it or if the Maritime Commission ships were giving it that he would give it.

Q. Did you tell Captain Hand you were speaking solely for yourselves?

A. No, sir, we were speaking for the crew of the SS "Nevada".

Q. Did you tell him that? A. Yes, sir.
[662]

Q. Where did the boat go on your last trip with the "Nevada"?

A. From Port Arthur to Cat Island and back to Port Arthur. [663]

Q. Do you remember the date when it returned to Port Arthur at the conclusion of that trip?

A. Yes. That was the 18th day of April.

Q. What year? A. 1938.

Q. Approximately what time did the boat arrive at Port Arthur?

A. It arrived in the forenoon around 8:00 o'clock; between 8:00 and 9:00, I believe.

Q. In the morning or afternoon?

A. In the morning.

Mr. Martin: May we have a three minute recess, Mr. Examiner?

Trial Examiner Myers: At the request of counsel for the Board we will take a five minute recess.

(Short recess.)

Q. (By Mr. Martin) Mr. Buckless, approxi-

(Testimony of Clarence Buckless.)

mately when that day did the crew draw its pay?

A. Approximately 10:00 o'clock in the forenoon.

Q. Were all the men paid that day?

A. You mean when I was? Or before?

Q. Yes.

A. No, they were all being paid. We were lined up and I was in the line and they were getting paid.

Q. Were there any men working at this time?

[664]

A. Yes, sir.

Q. Was the shift still working?

A. Yes, sir.

Q. Until what time?

A. Well, they worked their four hours, but while they were paying off they were sending another man in their place to relieve them while they got paid off. Like if you were on the 8:00 to 12:00, then either the 4:00 to 8:00 or the 12:00 to 4:00 would relieve the man for ten minutes; five or ten minutes, whatever it took; while he was being paid.

Q. I see. Was every man given a certificate of discharge as he was paid off that day?

A. No, sir.

Q. Who was? A. I was.

Q. Who else?

A. Another man by the name of Pleasant Linville, as I understand.

Q. Did anybody receive a certificate of discharge who hadn't quit or been fired?

(Testimony of Clarence Buckless.)

A. No, sir, not that I know of. It is not customary to do that unless you are fired or quit yourself on your own accord.

Q. To your knowledge did any others receive certificates of discharge that day except you and Pleasant Linville? [665]

A. None to my knowledge.

Q. Who handed you your certificate of discharge? A. The captain.

Q. Did he say anything to you before he handed you the certificate?

A. He gave me my money and then he handed me the certificate of discharge and told me he had another man in my place.

Q. What did you say? A. Well I was——

Q. Strike that. When the captain said that how did you feel?

A. Well, I didn't feel very good. I didn't know what to say. Then I asked him, I said, "Do you mean that I am fired, Captain?"

He says, "Yes."

"Well," I says, "what for?"

He said, "For bringing beer aboard the ship."

Q. What did he say?

A. He says, "For bringing that beer aboard the ship I told you not to bring."

Q. "For bringing that beer aboard the ship that I told you not to bring"?

A. Yes, sir. So I told him that I didn't bring that beer aboard the ship and I walked away. [666]

(Testimony of Clarence Buckless.)

Q. Did he say anything else?

A. No, I think that is all that was said at that time.

Q. What did you do then?

A. Well, I went out on the salon deck and I see the mate down on the well deck. So I went down and seen him.

I said, "Mate, I am fired."

He said, "What? You are fired?"

I said, "Yes, sir."

Q. Did he seemed surprised?

A. Yes, he did.

And then he said, "It is funny that the captain would fire a boatswain and not let the mate know it."

Q. What did you say?

A. Well, I said, "It has been done."

So I went back and started to pack my clothes and then I came back and I seen the mate.

I said, "Mate, should I quit now or work until noon? You have a lot of work to do, a lot of drums to put away and all these fenders. Would you want me to work until noon or should I quit now?"

He said, "I wish you would work until noon," which I did.

I worked until noon and then quit.

Q. And then left the boat? A. Yes, sir.

Q. Do I understand you to say that after you talked with the [667] mate on the well deck when you came down from the captain's room you went

(Testimony of Clarence Buckless.)

to your room? A. Yes, sir.

Q. Did you see any members of the crew on the way?

A. Yes. I seen several of them and told them of my downfall. Well, they wanted to set the ship down.

Q. Did they seem excited about it?

A. Yes, they did.

Q. About the fact that you had been discharged?

A. Yes, sir. Well, I told them that I thought that it would be better if they stayed aboard the ship and not say anything and I would file my case with the National Labor Board as I was fired for nothing but union activities as far as I could see; they knew that I was delegate on that ship and there had been rumors around before that that I was getting short on there.

Mr. Van Dusen: I move to strike it out as not responsive and as not made in the presence of an officer of the ship.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception.

Q. (By Mr. Martin) How much were you earning per month at this time?

A. \$100.00 plus overtime.

Q. And board and room? [668]

A. Yes, sir.

Q. Plus board and room?

A. Plus board and room and overtime.

Q. Mr. Buckless, do you remember how much

(Testimony of Clarence Buckless.)

you were receiving from the "Ayrian" at the time of your discharge?

A. \$80.00, I believe, was my pay at that time. Yes, \$80.00 as an A. B.

Q. Plus overtime?

A. Plus overtime. No. I wasn't getting no overtime in the "Ayrian".

Trial Examiner Myers: Did you do any overtime work? A. Yes, sir.

Q. (By Mr. Martin) Plus room and board?

A. Room and board.

Q. Do I understand, Mr. Buckless, that Pleasant Linville received a certificate of discharge the same day you did? A. Yes, sir.

Q. Did I understand your testimony also to be that Pleasant Linville was the boatswain who was fired just before you became boatswain?

A. Yes, sir, and rehired as an ordinary seaman on the trip back from Spain.

Q. When was he rehired?

A. No. The second trip, I think it was. After the trip to Spain we made another trip and at the end of that trip he was [669] hired as an ordinary seaman.

Q. Not as a boatswain?

A. No, as ordinary seaman.

Q. Did that place Mr. Linville as your inferior in rank? A. Sir?

Q. Did that make you Mr. Linville's boss?

A. Yes, sir. He was mine at first the first week

(Testimony of Clarence Buckless.)

and then as he came back to the ship I was his.

Q. Do you remember the day Mr. Linville was taken on as an ordinary seaman?

A. I remember the day. I couldn't say the date.

Q. Do you remember what happened that day?

A. I remember him talking with the mate quite a while.

Q. Whom did Mr. Linville replace?

A. He replaced an ordinary that had a sore ankle or something.

Q. Do you remember his name?

A. Lyons.

Q. Lyons?

A. Yes, sir, I believe Lyons is the name. [670]

Q. When Mr. Pleasant Linville boarded the "Nevada" at the trip to Spain did you have a discussion with him? A. No, nothing.

Q. Ordinary seaman Linville?

A. No, sir.

Q. Did you see him standing near the mess-room? A. No, sir.

Q. Did you put him to work?

A. Yes, sir.

Q. What did you have him do?

A. I put him on—they have a regular watch. I think it was the eight to twelve watch.

Q. Did you have a discussion with the mate Tranberg concerning this new ordinary seaman?

A. No, sir.

(Testimony of Clarence Buckless.)

Q. Mr. Buckless, do you remember an ordinary seaman named Patrick Dalton?

A. Yes, sir.

Q. When did he come aboard the ship?

A. I just couldn't tell you the date. He came on the ship the trip we made New Haven, Connecticut.

Q. Do you remember the time he came aboard?

A. Very well.

Q. Will you tell us what happened that day?

A. He came aboard in the morning ready to sail, and he [671] wanted to know where the boss was.

Q. Who?

A. Where the boss was. So somebody notified me that there was a man in the passageway that wanted to see me. So I went out and asked him what he wanted, asked him what he was. He said: "I am an ordinary seaman." I said: "Have you a Union book." And he pulled out one of these Fink, better known as Copeland books.

Trial Examiner Myers: What?

A. Fink, I believe they call them.

Q. What do they mean?

A. I just couldn't explain that.

Q. It was not a Union book?

A. No. So I said: "That doesn't go here. This ship is 100 per cent Union, and we don't want anybody on here but Union men." Just then the mate stepped in the passageway, and he wanted to know, "What is the matter." And I said: "This man

(Testimony of Clarence Buckless.)

hasn't got a Union book, so I suggested he should go ashore with his suitcase." And the mate said: "No, you go on back in the forecastle and change your clothes and come out here on deck," which he did. And he told me to get the gang out.

Q. Who told you to get the gang out?

A. The mate. And I said: "I will be done with my breakfast in just a minute, and do that." It was just before [672] eight o'clock. Which I did. So I turned the men to, and I asked this fellow to do a few things and he didn't know what to do. He stood there and looked at me; and I asked him if he was ever on a ship before, and he said, "No." We were just taking top lifts down for the cargo aboard and I said: "Can you tie a knot?" And he said: "I can learn." And I said: "You get down here and I will show you how to tie this knot, and I will give you three more rope yarns, and you put them on there, if it takes you until five o'clock at night." And the mate was standing over me, I didn't notice him at the time, and he told me to be a little easy on the fellow, that he would no doubt learn. And I said I doubted it; and he smiled, and I smiled back. He continued on, and I came back about an hour later, and he was still tying that knot. So I didn't feel very good about it anyway——

Q. Why didn't you?

A. Well, it made more work for me.

Q. What did?

A. Well, I would have to go and do his work

(Testimony of Clarence Buckless.)

and mine too. So I tied this, and I said: "You see that man with the white hat on. You follow that man, and if he jumps over the side, you jump too."

Q. Who was the man with the white hat?

A. The chief mate. And he followed him around for about [673] five minutes, and the mate then came to me and he said: "Boatswain, what is the idea?" I said: "Well, he is no good to me. He doesn't know nothing. You fired a good sailor and took this man. He has never been to sea, and not even a Union man, and so this is what you get. The work is all on me now."

Q. Did you smile? A. Yes.

Q. Did the mate?

A. He did. I didn't smile at first, but I just had to smile. We both smiled at one another. And he said: "Get him a pot of paint and see if he can paint one of these winches."

Q. Did the mate seem sore about it?

A. No. He said it with a smile.

Q. Who was the good man you told him he had fired?

A. Lee Harmon. Herman Lee was the man's name.

Q. Was he a good man?

A. He was a very good ordinary; an extra good ordinary, and a good Union man.

Q. Mr. Buckless, will you say that this episode was typical of the relationship between you and Mate Tranberg? A. Yes, sir.

(Testimony of Clarence Buckless.)

Mr. Williams: I don't see the relevancy.

Trial Examiner Myers: Wait now. Strike out that answer for the time being. [674]

Mr. Williams: I don't see the relevancy in his question, singling out an episode that happened.

Mr. Martin: I asked him if it was typical.

Mr. Williams: No relevancy.

Trial Examiner Myers: What is the purpose?

Mr. Martin: The purpose is to show through an episode, rather than through direct questioning, the friendly relationship existing between the mate and the boatswain. [675]

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Please answer.

Mr. Williams: Note our exception.

A. Could I hear the question again?

Trial Examiner Myers: He said yes.

(The question was read by the reporter.)

A. Yes, sir, it was.

Q. (By Mr. Martin) Mr. Buckless, while you were boatswain on the "Nevada" was your work ever criticized? A. No, sir.

Trial Examiner Myers: Adversely?

A. No, sir.

Q. Do you know what adverse means? Did they complain about your work?

A. No, never did. I never had a word said to me that it was wrong in any way.

Q. (By Mr. Martin) Were you assigned any special duties while you were aboard?

(Testimony of Clarence Buckless.)

A. Yes. I made a pilot ladder on the way to Spain.

Q. Didn't the mate tell you to?

A. Yes, sir. He asked me if I could make one, and I told him I could. And he told me where the gear was and everything, and I went ahead and made it; and he thought it was a very good job, one of the best pilot ladders he had ever seen.

Q. Was it one of the best you had ever seen?

[676]

A. Yes, I believe it was.

Q. In over twenty years at sea?

A. Even if I made it myself, it was.

Q. Did the mate generally follow the suggestions of his boatswain?

A. At times. I would suggest things, and he would carry them out; and a lot of times, in the morning I always got my orders, and he would ask me what my idea was of the day's work, and I would suggest it; and he would say, go ahead. In fact, it was most of the time that way.

Q. How about if somebody wanted a little time off?

A. Well, a whole lot of times such as—well, if we were in port, if it was raining, or snowing up north, or something that we couldn't do much work out on deck, I would suggest that he let the boys go ashore, which he would do. He said he would like to have one, if there was one not going ashore, that he would like to have him stick around, in case there

(Testimony of Clarence Buckless.)

was something to be done, stores or something, but he was always very good about things like that.

Q. Was Gordon Rosen on the "Nevada" working under you? A. Yes, sir.

Q. Were you his boss? A. Yes, sir.

Q. Who was your boss?

A. The chief mate. [677]

Q. What was his name?

A. Carl Tranberg.

Q. Did chief mate Tranberg ever complain to you of Rosen's seamanship? A. Never did.

Q. Did he ever say that a specific job Rosen had done was poorly done? A. No, he never did.

Q. Did he ever say Rosen is loafing on the job?

A. Never.

Q. Did he ever ask you if you thought Rosen was loafing on the job? A. No.

Q. Did he ever ask you if you thought Rosen was doing a poor job at his duties?

A. No, sir.

Q. Did Tranberg ever tell you that Rosen was in his bunk playing cards? A. No, sir.

Q. Did Tranberg ever send you back to the bunk to get Rosen? A. No, sir.

Q. Did Rosen ever fail to appear when he was supposed to be on watch?

A. Never did. In the day time while he was under me, he never did. [678]

Q. When was he under you?

(Testimony of Clarence Buckless.)

A. He was under me every day from 8:00 to 12:00 o'clock.

Q. As boatswain what were your off hours?

A. From 8:00 to 12:00 and 1:00 to 5:00 in the week days, and Saturday afternoon and Sunday off.

Q. That is at sea? A. At sea or in port.

Q. Were you in direct charge of Rosen's activities during his morning shift from 8:00 to 12:00 a. m.?

A. Yes, sir.

Q. Was Rosen willing or unwilling to do things that you, his boss, directed him to do?

A. Willing.

Q. Did he do the things you told him to do?

A. Yes, sir.

Q. Did he loaf on the job?

A. Never did. In fact, I have had him in places where he could have, and watched him, and he never did.

Q. Can you tell me of such an instance?

A. Well, one time I had him painting where I could look down through the hatch on top, and he couldn't even see me, and I never caught him loafing.

Q. Did you go and look once in a while?

A. I did.

Q. Through the hatch? [679]

A. Yes, sir.

Q. What for?

A. To see how he was getting along with his work, if he was pretty near done.

(Testimony of Clarence Buckless.)

Q. Did you go to see if he was loafing?

A. No. I never thought I had to do that.

Q. Why not?

A. Because I didn't think I had to do that, because I never caught him loafing.

Q. Did Mr. Rosen take pride in his work?

A. Yes, sir.

Q. Did he do hard work?

A. He used to do the hardest, what I would call the hardest work, such as going aloft, rigging gear on the smokestack to be painted, and the masts, and most of the splicing.

Q. Would you send him aloft?

A. Yes, sir.

Q. Why?

A. Well, he was, I figured, the best man to be sent aloft.

Q. Did he want to go aloft?

A. Yes, I believe he did.

Q. Did he ask you to go aloft?

A. Not right out. He was always willing though.

Q. Was he ever anxious?

A. He would ask me if I wanted him to go, and I said, yes, [680] if you care to go.

Q. Mr. Buckless, what did you say the captain said to you just after he handed you your certificate of discharge from the "Nevada"?

A. He said he had another man in my place.

Q. What did you say to him?

(Testimony of Clarence Buckless.)

A. I asked him if I was fired, and he said: "Yes."

I says: "For what reason?"

And he said: "For bringing that beer aboard that I told you not to bring."

Q. What beer do you think he was referring to?

A. I was carrying some beer aboard down at Texas Island; that is, I was carrying it in on the dock, and he was going out to the gate, and I was going in, and he saw that I had some beer.

Q. How much beer? A. A case.

Q. A case?

A. Yes, sir. And he says: "Don't take that aboard the ship." And I said: "All right, sir." And he kept on going, and I put the beer in the shed. We had some sheds along there for cargo and drums of oil and such; and the beer didn't belong to me, in the first place; and so I reported this to the man that the beer belonged to, and he took care of it. [681]

Trial Examiner Myers: Who was the man? Was he an officer? A. No, sir.

Q. One of the mates? A. No.

Q. Go ahead?

A. I would rather not tell the man's name. I guess the man might not mind, either.

Q. What is his name? A. Hart.

Q. Who? A. George Hart.

Q. (By Mr. Martin) Who?

A. George Hart.

(Testimony of Clarence Buckless.)

Q. Is that Quartermaster Hart?

A. Yes, sir.

Trial Examiner Myers: Did the beer eventually get aboard? A. Not that I know of.

Q. (By Mr. Martin) Can you tell us on what trip this took place?

A. This took place the day before we sailed for Cat Island, that last voyage we made.

Q. The day before you sailed——

A. For Cat Island. [682]

Q. And where did this take place?

A. Texas Island, Port Arthur, Texas Oil Company.

Q. That is, it took place at The Texas Company dock? A. Yes, sir.

Q. At Port Arthur, Texas?

A. Yes, sir. They call that Texas Island, where the ships dock at.

Q. I see. Did I understand you to say that you left the beer on the dock and went aboard the ship yourself? A. Yes, sir.

Q. Didn't take the beer on? A. No, sir.

Q. Then or ever? A. No, sir.

Q. Or ever? A. Or ever.

Q. Did you ever see the beer brought aboard?

A. I never did.

Trial Examiner Myers: Did you see it on board afterwards? A. I did not.

Q. Do you know what happened to the beer?

A. No, I don't. I never even asked George.

(Testimony of Clarence Buckless.)

Q. Did you tell Hart?

A. I did. I told him where it was.

Q. Did you tell him that the captain told you not to bring it [683] on board?

A. I did. And he said then: "I hadn't even better take a chance myself." Whether he left the beer there or whether he took it aboard, I don't know.

Q. Had the captain ever mentioned beer to you between this time and the time he mentioned it when you received your certificate of discharge?

A. Never did.

Q. After the captain spoke to you out there on the dock that morning at Texas Island about the beer how long was it after that before the boat sailed from that dock?

A. The following morning.

Q. At what time?

A. I really couldn't say. It was between 8:00 and 10:00 o'clock I believe; around 8:00 o'clock.

Q. What time was it when the captain spoke to you about the beer on the dock?

A. It was between 12:00 and 1:00 o'clock.

Q. And the boat sailed the next morning about 8:00?

A. Yes, sir.

Q. Do you remember seeing the captain any time during that period from about 12:00 one day to 8:00 the next?

A. No, sir.

Q. You didn't see him?

A. I never saw him until the next morning we

(Testimony of Clarence Buckless.)

sailed. I saw [684] him on the bridge. I was in the forecastle; not talking with him.

Q. Did he come up to you? A. No, sir.

Q. You didn't talk with him? A. No, sir.

Q. He didn't ask you whether you brought the beer aboard? A. No, sir.

Q. During that period between 12:00 noon and 8:00 a. m. did you talk with the mate?

A. No, sir. I might have talked with him on line of duty.

Q. Did he give you any orders?

A. No. He gave me orders that morning what to do.

Q. Did the mate ask you if you brought any beer aboard? A. No, sir.

Q. Did he make any mention of beer?

A. I asked him if I could before; I even went out after it.

Q. What did he say?

A. He said it was immaterial; he couldn't tell me to do it or not to do it.

Q. During this period between 12:00 noon and 8:00 a. m., did he ask you if you had brought any aboard? A. No, sir.

Q. Did any officer of the vessel?

A. No, sir. [685]

Q. Did any officer of The Texas Company, Marine Division? A. No, sir.

Q. Mr. Meyer or Mr. Hand? A. No, sir.

Q. Mr. Buckless, while you were on the "Ne-

(Testimony of Clarence Buckless.)

vada'', that is, during the period you were working for the "Nevada'', on the boat and on the docks when you would be docked, did the captain in any other instance tell you not to bring beer aboard the ship? A. Never did.

Trial Examiner Myers: Was drinking permitted on board the ship?

A. I really don't know. I don't believe it is, as the Captain says no. The captain I believe is the man that permits it or doesn't permit it. He never said nothing to me about it.

Q. Did you ever see any drinking aboard ship?

A. Yes.

Q. Openly?

A. Yes. I don't believe I ever seen a ship yet that didn't have drinking.

Q. Did they have any drinking aboard the "Nevada"? A. Yes, sir.

Q. Prior to this time? A. Yes. [686]

Q. And about this time?

A. Well, I was fired when we came back on Cat Island, so I don't know; and we couldn't get nothing to drink over there. We couldn't even go ashore.

Q. Mr. Buckless, do you know whether Pleasant Linville was a member of any union when he was aboard the "Nevada" as an ordinary seaman?

A. I believe, yes, he was a member of the N. M. U.

Q. He was?

(Testimony of Clarence Buckless.)

A. Yes, sir. As I understand, he joined at Galveston while being on that boat his first trip.

Q. How many trips had he made as ordinary seaman when he was fired?

A. I believe it was just that one, from Port Arthur to Claymont, Delaware, and from Claymont to New Orleans, and from New Orleans to Port Arthur, if I am not mistaken.

Q. Did he make the trip from Port Arthur to Cat Island? A. Yes, sir.

Q. Was he fired then at the end of his first trip or at the end of his second trip?

A. At the end of his second trip.

Q. Now, during those two trips that Mr. Linville was aboard the "Nevada" as ordinary seaman would you say that he was an active union man?

A. Just ordinarily. [687]

Q. Was he a delegate? A. No, sir.

Q. Did you ever see him talk with the mate or the captain? A. No, I don't believe I ever did.

Q. Now, Mr. Buckless, did I understand you to testify that you worked on the SS "Washington" from about February 20, 1937 to March 8, 1937?

A. Yes, sir.

Q. A period of approximately eighteen days?

A. Similar to that.

Q. And did I understand you correctly to say that you did not engage in any union activities during that period on the SS "Washington"?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Did you say why you left the SS "Washington"?

A. Yes, sir.

Q. Why was that?

A. I had a sore eye.

Q. You left for medical reasons?

A. Medical treatment.

Q. Who was captain of the "Washington" at that time?

A. Bergman.

Q. Who was first mate?

A. I can't think of his name. He was a short time on there. [688]

Q. Who was second mate?

A. Sweeney, Mr. Sweeney.

Q. Do you know who was third mate?

A. Johnnie Carr.

Q. And do you know who was boatswain?

A. No, I don't know his name. Ripkin was first mate.

Q. Ripkin?

A. Ripkin. I don't know how to spell it.

Q. What was your job on that sailing?

A. Quartermaster.

Q. During that period on the "Washington" was your work ever criticized?

A. No, sir.

Q. Adversely?

A. No, sir.

Q. Did I understand you to say that you later shipped on the SS "Washington"?

A. Yes, sir.

Q. From approximately June 2, 1938, to July 14th, 1938?

A. Yes, sir.

Q. What job did you have this time?

A. Quartermaster.

(Testimony of Clarence Buckless.)

Q. Who was captain this time?

A. Captain Bergman.

Q. Who was first mate? [689] A. Johanson.

Q. Who was second mate?

A. Johnnie Carr.

Q. Who was third mate? A. Round.

Q. Mr. Buckless, when you boarded the "Washington" in 1938, what conditions did you observe on the ship?

A. Well, there were several things——

Mr. Van Dusen: Is this the first trip or the second one?

A. They needed new ventilators, wind chutes, screens for the ventilators, and screen doors, and several different things were needed.

Q. Was there any discussion among the crew about those conditions?

A. Yes. I believe I called a meeting first, a few days out to sea, and then we put in for those things. A man by the name of Zinkiewicz was elected deck delegate. Gordon Rosen ship delegate, and a man by the name of Cain was chairman of the meeting at that time, and the wireless operator was recording secretary.

Q. Was it decided at this meeting to take any action concerning these conditions? A. Yes, sir.

Q. What was decided? [690]

A. It was decided that the delegates go to the captain and ask for these things. I believe they wanted wash buckets. Oh, there were several dif-

(Testimony of Clarence Buckless.)

ferent things. They asked for them, and I believe got them.

Q. Did you take any action in this matter?

A. No. Well, I was at the meeting. I was the one that called the meeting, in the first place.

Q. But you were not a delegate? A. No, sir.

Q. Do you remember a discussion one evening at which the chief engineer was present?

A. Yes, sir.

Q. Who else was present?

A. Some of it. Well, there was Zinkiewicz, Gordon Rosen, myself, the chief engineer, and several others about the deck. Gordon Rosen and I were talking about union matters, and the chief engineer spoke up, and he says:

“Are you one of those guys off the ‘Nevada’, fired off the ‘Nevada’?”

And I said: “Yes, sir.”

And he said: “Tell us about that. I have heard a lot about it, but I haven’t heard the right of it yet.”

I said: “Well, there is not much to tell, only I got fired for union activities, I thought, and filed a complaint with the Labor Board against The Texas Company for doing so.” [691]

And he said: “What do you think you will get out of it?”

And I said: “I am in hopes of getting back pay and restored back to duty on the ‘Nevada’.”

He said: “Don’t you think they will make it hard for you when you get back on the ‘Nevada’, if you do get back?”

(Testimony of Clarence Buckless.)

And I said: "If they do, I can go further than that. I can take it up again, and can take it through the office."

He said: "Well, if I wasn't wanted on a ship, I don't think I would stay on it."

And I told him: "This is something I wouldn't do, is put my tail between my legs and run away like a dog. I will stay there and fight for my right, for I have done my work, and I think there is nothing other than union activity that I got fired for." And I still persist in that.

Q. Do you remember anything else about that conversation?

A. Well, Gordon Rosen then spoke to him, and they had a conversation about the M. E. B. A. was going to hold an election of the engineers of The Texas Company. He said, well he would take care of that himself. And Gordon said: "You know it would put more engineers on, and give you a straight eight hour day, with pay for overtime." And he still insisted that he would look after that himself; that he wanted to hear nothing about it. He said he belonged to a union at one time about twenty years ago, and he said that he was sold out. And Rosen said: "This is not twenty years ago. This is 1938 now. This is a bigger and more democratic [692] union." And he said he didn't think there was any chance for this union to sell out; and he told him he ought to come to some of our meet-

(Testimony of Clarence Buckless.)

ings. And he said he wouldn't, that he was not interested. [693]

Q. Anything else?

A. That is about all I can think of right now. Yes, there was one thing he did say. He said he didn't care if he had a man that was a Wobbly or not working for him. And I said: "I am no Wobbly."

Trial Examiner Myers: What does that expression mean?

A. Well, that is some kind of a union, I believe. I really don't know the whole story of it myself. I have heard a whole lot of Wobblys, but I never belonged to them. He said: "Whether he is a Wobbly or not, all I want of him is eight hours work, and then crawl in his bunk and shut up." And I said: "That is hardly fair to make a man do that. That is not justice."

Q. Did he ask you why you were fired from the "Nevada"? A. Yes.

Q. What did you answer?

A. I told him for union activities.

Q. Did you say anything more?

A. Not that I can recall right now.

Q. What did Mr. Dilbert reply to that, to your statement that you had been fired for union activities?

A. I forget just what the words he used were now.

Q. Did he ask you if that was the reason given

(Testimony of Clarence Buckless.)

you as to why you were fired?

A. No, I don't believe he did. [694]

Trial Examiner Myers: We will recess now until 9:00 o'clock in the morning.

(Whereupon, at 5:05 o'clock p. m., September 15, 1938, the hearing was adjourned to 9:00 o'clock a. m., September 16, 1938.) [695]

Proceedings

Trial Examiner Myers: Are you ready to proceed?

Mr. Martin: Yes, sir.

CLARENCE BUCKLESS

resumed the stand and testified further as follows:

Direct Examination

(Continued)

Q. (By Mr. Martin) Mr. Buckless, at the close of the testimony yesterday were you testifying concerning a conversation that you and some others had with chief engineer Dilbert?

A. I believe so.

Q. Do you remember whether anything was said in that conversation concerning why Gordon Rosen was fired from the "Nevada"?

A. Well, as I was holding the conversation with Dilbert he asked me why I got fired.

Q. Why you got fired? A. Yes, sir.

Q. What did you say?

(Testimony of Clarence Buckless.)

A. I told him that I was delegate on that ship, and fired for union activity; and the following day, as soon as I left, Gordon Rosen was elected delegate, and the following day he got fired.

Q. You told him that? A. Yes, sir.

Q. Did he say anything then?

A. I really can't recall right now. [697]

Q. Did he say anything about your getting fired or as to why you got fired from the "Nevada"?

Trial Examiner Myers: Give us the substance of the conversation. Of course you can't remember the exact words.

A. No. Well, as we were talking, he says: "What did you get fired for?"

And I says: "I was delegate on that ship, and fired for union activities. And that afternoon or evening, Gordon Rosen was elected delegate, and the following day he got fired, so it was nothing more than union activities that I could see that we were fired for."

Q. (By Mr. Williams) That was your opinion?

A. No, we were talking.

Q. That is the opinion you expressed to Dilbert?

A. It was the only thing.

Q. Was that the opinion you expressed to Dilbert? A. Yes.

Mr. Williams: Then I move that it be stricken.

Trial Examiner Myers: No, he is repeating the conversation he had with the chief engineer. I will deny the motion.

(Testimony of Clarence Buckless.)

What did the chief engineer say? Was that the end of the conversation? Did he just listen to your story, and walk away, or did he say anything?

A. No, there were other things said there at that time, but I just can't bring them out clear now.

[698]

Q. (By Mr. Martin) Mr. Buckless, when did you say you left the "Washington" that time?

A. The last time?

Q. When you received your fifth certificate of discharge.

A. On July 14, I believe; on or about July 14. (The witness consulted notes.) Yes, sir, on or about July 14.

Q. Did you at any time shortly thereafter write an affidavit concerning conversations you had had while aboard the "Washington"?

A. Repeat that question, please.

Trial Examiner Myers: Read the question, Mr. Reporter.

(The question was read by the reporter.)

A. Yes, sir.

Q. About how long thereafter?

A. It was the same day, or the second day after I left the "Washington".

Q. Where did you write this affidavit?

A. At the Union Hall, Port Arthur, Texas.

Q. To your knowledge, do you know whether Port Arthur, Texas, is in Jefferson County?

A. It is, I believe.

(Testimony of Clarence Buckless.)

Q. I hand you an affidavit consisting of two papers, dated Port Arthur, Texas, July 16, 1938, to whom it may concern, and signed Clarence Buckless, and subscribed and sworn to before me the 16th day of July, 1938, Kathleen King, Notary Public, [699] Jefferson County, Texas, and bearing a notarial seal; and I ask you if that is a copy of the affidavit that you made at that time and signed?

A. Yes, sir.

Q. Is that the affidavit? A. Yes, that is it.

Q. Now I hand you this affidavit and ask you if that refreshes your recollection with respect to any statement by chief engineer Dilbert concerning the reason or reasons why you or Gordon Rosen were fired from the SS "Nevada"?

Mr. Williams: We object to this. It is apparently an effort of counsel to impeach his own witness.

Trial Examiner Myers: To impeach his own witness?

Mr. Williams: The witness has given testimony as to what actually took place there. Now he is trying to get him to change it. I think this has been gone over, I think this has, at least the third time.

Trial Examiner Myers: I will sustain the objection.

Mr. Martin: Note the exception.

Mr. Wright: Mr. Examiner, I would like to except to the ruling of the Examiner, and point out for the record that this man has testified that he is unable to remember any further conversation on

(Testimony of Clarence Buckless.)

this particular subject, and that this is a proper and reasonable effort to refresh his memory with respect to that conversation, with the use of a properly executed [700] affidavit, wherein Mr. Buckless has set forth at the time when he did remember the conversation what actually transpired in that conversation.

Mr. Martin: The evidence that the witness will testify to will be subject to the cross examination of defendant counsel.

Trial Examiner Myers: I will stand by my original ruling.

Q. (By Mr. Martin) Mr. Buckless, have you testified to all you can remember at this time concerning that conversation with Dilbert?

A. No, there are other things that I could think of, I believe.

Trial Examiner Myers: Will you tell us, so that we can go ahead with this hearing?

Q. (By Mr. Martin) Are you going to repeat what you said yesterday?

A. Well, I could, I believe.

Trial Examiner Myers: I think it would be quicker if you will tell us all you remember about that conversation.

Mr. Martin: Mr. Examiner, may I observe that we spent considerable time at the close of yesterday's hearing on this conversation?

Trial Examiner Myers: I am trying to get to another phase of this case.

(Testimony of Clarence Buckless.)

Mr. Martin: Rather than repeat all that happened yester- [701] day——

Trial Examiner Myers: Do you withdraw the question?

Mr. Martin: No. I want to ask the witness if you told us yesterday and this morning all that you at present can remember concerning that conversation? A. At the continuation——

Mr. Williams: We urge the same objection. The witness has looked at some paper and what it says there, and we level the same objection to it.

Trial Examiner Myers: Does that paper just shown you refresh your recollection as to a certain part of the conversation that you omitted before you saw the paper?

A. Not to what I was thinking of. [702]

Q. Will you tell us the story, and let's get over with it. Let's have it now?

A. At the end of this conversation Dilbert and I, he said: "They will never catch me that way. It is mighty stupid of them." And then he said—I followed along with other things that would be the the same things as I said yesterday.

Q. (By Mr. Martin) What was he referring to? A. Referring to me being discharged.

Q. For union activities? A. Yes, sir.

Mr. Williams: Now, we object to counsel testifying, and the witness saying yes.

Trial Examiner Myers: Let me hear that question.

(Testimony of Clarence Buckless.)

(The question was read by the reporter.)

Trial Examiner Myers: What is your motion?

Mr. Williams: I was going to level an objection to it and the witness answered before I could. I move that it be stricken now.

Trial Examiner Myers: I will strike the answer. And hereafter don't answer a question when you see counsel for the company getting up to enter an objection to that question. A. Yes, sir.

Q. (By Mr. Martin) Mr. Buckless, while you were on the "Washington" did you have a discussion with the steward? A. Yes, sir. [703]

Q. Concerning what?

A. Concerning our food aboard the "Washington".

Q. Will you tell us what transpired as nearly as you can remember it?

A. Well, I ran into the steward on the after deck one day, and *he* asked him if we were getting the same food as the officers were amidships. And he said we were. I then asked him if they were getting canned ketchup, as we were in cans, instead of bottles; and if they were getting jam in bulk, instead of glass jars, and pickles in bulk, instead of glass jars.

Q. What did he say?

A. He said: "No, they are getting pure fruit jam," and we were getting it in bulk, that is. imitation; and we were getting ketchup in gallon cans.

And I said: "Is it the custom of The Texas

(Testimony of Clarence Buckless.)

Company that the crew should be fed equal to the officers?"

And he said: "Yes, but they wouldn't appreciate it if they did get it."

And I told him that was not the idea; that was not the custom of The Texas Company to do that, I didn't think. And I asked him if he would give us the same as the officers were getting. So I let it go then.

Q. Did you tell him you were speaking for yourself alone?

A. Yes, sir, and the crew, and in behalf of the crew. We had [704] a little conversation at the mess table about those things, and they asked me to speak to him about it. And nearing the end of the trip I asked him again if we were not going to get ketchup in bottles and fresh fruit jam, the same as the officers were getting; and he said he would see about it. So I told him I would have to take it further if he didn't; that I would take it up with Mr. Hand, or the delegate, and let him look after it.

Q. Anything more?

A. I think that is about all of that.

Q. Did he give you any answer as to what he would do about it?

A. Yes, I believe he said that he would give it to us.

(Testimony of Clarence Buckless.)

Q. Did you take the matter up with Captain Hand? A. No, sir.

Trial Examiner Myers: Did you eventually get what you wanted? A. Yes, sir.

Q. (By Mr. Martin) During your period on the "Washington" did you have any discussion with Mate Johanson concerning overtime?

A. Yes, sir.

Q. Will you tell us in substance what you remember of that conversation?

A. Well, on this trip to New Orleans, the day before we got [705] to New Orleans, to Amesville, the mate came into my room to check my overtime, and I was two hours short, and he said he wouldn't give it to me. And I asked him why. And he said he didn't see where it was coming to me; that the quartermaster was not allowed overtime after the first day in port, as the A. B.'s and ordinaries were, but not the quartermasters. He said they have got a night off. I got four hours off at night, and he didn't think they should get it. And he finally told me: "You are no sailor anyhow. You are lucky to have a job, instead of being kicking for overtime."

Well, I said: "Listen, I have been going to sea for some twenty years." And I told him the different occasions since I had been going to sea, and served about two years in The Texas Company, and it was pretty late time to tell me I was no sailor.

And I said: "Judging from that pilot ladder you made the other day, you have got much to say about

(Testimony of Clarence Buckless.)

a sailor. A good sailor would be ashamed to turn out such a job."

Q. Did you say anything about Rosen?

A. No; I don't believe I did at that time.

Q. Did you make any reference to the ship's delegate?

A. Yes. I told him that I would have take this up with the delegate who collected overtime, and he didn't say it.

Q. Were you ever paid that overtime?

A. Never was. [706]

Q. As you came into Port Arthur on your last trip did you have any conversation with the mate?

A. Yes, sir. We got paid off. Zinkiewycz came back and said that Gordon Rosen and I were fired, and he was fired; that he had seen papers on the mate's desk to that effect, and our pay was made out. So I then asked the mate.

Q. (By Mr. Van Dusen) Was this conversation in the presence of the mate, Zinkiewycz's conversation with you? A. No.

Mr. Van Dusen: Then I move to strike, Mr. Examiner.

Mr. Martin: A preliminary question.

Trial Examiner Myers: You are going to connect it up?

Mr. Martin: Yes, sir.

Trial Examiner Myers: I will allow it for the time being, and if it is not connected up I will entertain a motion to strike.

(Testimony of Clarence Buckless.)

A. As I went on I asked the mate if I was fired. And he said: "I haven't fired you, have I?"

And I said: "No, but there is a rumor going around that I am fired. I would like to know. If I was quitting I would tell you about it, and I think you should do the same by me."

And he said: "Don't you want to work your watch this afternoon?"

And I said: "Certainly. It is my watch, and I will stand it." At 3:00 o'clock I got a little uneasy, and I asked the [707] mate: "I wish you would tell me if I am fired or not."

And he said: "Yes, you are fired. Come up and get your money." Which I did. And then I asked him what I was fired for; and he said: "You are fired for missing a watch in Claymont, Delaware."

I said: "I didn't miss a watch in Claymont, Delaware. I arranged that watch to be stood by the quartermaster, on the 8:00 to 12:00 watch, and paid him at the rate of a dollar an hour for standing it. The chief can vouch for it."

And he said: "Well, you are no sailor anyhow. I don't want to argue with you. Get your clothes and get off of here."

Which I did. [708]

Q. (By Mr. Martin) Approximately what time did the boat arrive at Port Arthur?

A. It arrived that morning, the 14th.

Q. July 14, 1938?

A. July 14th, on or about.

(Testimony of Clarence Buckless.)

Q. What time?

A. On or about eight o'clock, I should say.

Q. What time did you have this conversation with the mate?

A. I started at twelve noon, and had one then, and then another one at three o'clock.

Q. At three o'clock he told you you were fired?

A. Yes, sir.

Q. When did your watch end?

A. At four.

Q. At three o'clock when he told you you were fired did the mate say exactly when you were fired?

A. He said I was fired right then.

Q. Did he say you are fired at the end of this trip?

A. No, right then.

Q. Right then?

A. Yes, sir.

Q. Meaning——

A. Meaning at three o'clock.

Q. Right then?

A. Yes, sir. [709]

Q. (By Mr. Pipkin) Were you in port then?

A. Sir?

Q. Were you in port then?

A. Yes, sir.

Q. (By Mr. Martin) Had you finished your watch when you were told you were fired?

A. Well, I had about a half an hour to go when I got done talking with him, to complete it, but I was finished. He had paid me off then and told me to leave the ship.

Q. What time were you handed your certificate of discharge?

A. About three thirty.

(Testimony of Clarence Buckless.)

Q. Who handed it to you? A. The mate.

Q. Any more conversation at that time?

A. No, sir.

Q. Were other men still working at that time?

A. Yes, sir, those men on watch.

Q. Were other men being given certificates of discharge at that time? A. No, sir.

Q. Were other men in line waiting for money?

A. No, sir.

Q. Had any gone ashore? A. Yes.

Q. Was the big draw before or after? [710]

A. Before.

Q. Had the rest of the crew signed shipping articles again?

A. I really wouldn't know.

Q. To your knowledge, how many others received certificates of discharge that day?

A. Zinkiewicz, Gordon Rosen and myself.

Q. Any others?

A. Not that I know of.

Q. Do I understand that the mate made some reference to your missing a watch?

A. Yes, sir.

Q. Did you know what watch he was referring to? A. Yes.

Q. Did you know what instance he was referring to?

A. Yes, sir, because I had another man stand it for me.

Trial Examiner Myers: Was that permissible or

(Testimony of Clarence Buckless.)

customary to have somebody to stand your watch?

A. Customary.

Q. Did you get permission from anybody to do it?

A. No.

Q. Was it customary for you to get permission before you have a substitute stand your watch?

A. Not necessarily.

Q. Is it often done? [711]

A. Often done, yes, sir, by the mate and the sailors, the mate as well as the crew.

Q. Before the time here in Port Arthur the mate mentioned it, had anything been said to you?

A. Not a word.

Q. About missing a watch?

A. Not a word.

Q. What was your salary as quartermaster on the "Washington"?

A. Eighty-seven dollars and fifty cents per month and board and room, and overtime.

Q. (By Mr. Van Dusen) You say no overtime?

A. And overtime.

Q. Plus overtime? A. Plus overtime.

Q. (By Mr. Martin) Was there or was there not any occasion while you were on the "Nevada" in 1937 and 1938 that a number of men aboard were ill, sick?

A. Were they?

Q. Yes. A. Yes, sir.

Q. There were some? A. Yes, sir.

Q. Can you tell us about that?

A. A number of the whole crew were sick, from

(Testimony of Clarence Buckless.)

the captain [712] down, with the exception— Well, *there not* over four or five men that were not.

Q. What do you mean by sick?

A. Well, they were throwing up and in weak condition.

Trial Examiner Myers: Were they seasick, or did they have ptomaine poisoning?

A. Well, I really don't know. They say it was caused from the water taken on at Claymont, Delaware. It happened before one time on the same ship, two years ago.

Q. (By Mr. Martin) Well now, did the men keep working?

A. Yes, the majority of them. I remember one instance the men on the four to eight watch.

Q. In the morning or afternoon?

A. In the evening, afternoon. An A. B. and an ordinary were a little too sick to work. They went back to their room about 4:30. Before going back to their room, I took them up to the mate and told him they were sick, and I was sick myself.

And he said: "I couldn't do anything about it. Take them down to the captain."

So I did. The captain was lying on a settee in the chart room and he was pretty sick himself. And I told him the boys were sick; and he said there was nothing much he could do about it.

And he said: "I am so sick I can hardly stand up myself." [713]

And I said: "There is something should be done. Very near the whole crew is sick. Something ought

(Testimony of Clarence Buckless.)

Q. Did you know that Zinkiewycz was going to be on that ship? A. No, sir.

Q. After you got aboard the ship and met Zinkiewycz there, did you have a conversation with him?

A. I told him I was kind of surprised to see him and Gordon aboard.

Q. What did he say?

A. He said he was kind of surprised to see me aboard too.

Q. After you got aboard the ship, did you have a conversation with Rosen?

A. Nothing right at that time that I came aboard, I [Illegible]

Q. Have you any knowledge that would lead you to [Illegible] that at the time you got on Rosen didn't know yo [Illegible] [716] to sail on that boat?

A. No. Rosen told me he didn't know it.

Q. When did he tell you that?

A. Well, it was sometime during that day.

Q. Did Rosen say whether he knew Zinkiewycz was going to be on board?

A. No, he didn't say.

Q. Did Zinkiewycz say whether he knew Rosen was going to be on board? A. No.

Mr. Pipkin: Mr. Examiner, all these questions are leading in the first place and are hearsay and do not come within the scope of testimony you have been allowing in the second place.

Trial Examiner Myers: Don't lead him so much.

Mr. Pipkin: I move to strike on that ground.

(Testimony of Clarence Buckless.)

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Mr. Buckless, is it customary among sailors to sail with any company that they wish to? A. Yes, sir.

Q. If they can get a job? A. Yes, sir.

Q. Is it customary among sailors, once they are sailing with a certain line, to continue getting jobs with that line if they can? A. Yes, sir. [717]

Q. And desire to? A. I believe so.

Q. Once a sailor is sailing with a line, is it customary, would you say, for him to try to get other jobs with the same company? A. Yes, sir.

Q. On different vessels with the same company?

A. Yes, sir.

Q. If he wants to? A. If he wants to.

Q. Once a sailor is on a ship, would you say it is customary for him to stay aboard that ship if he likes to and if he doesn't get fired? A. Yes, sir.

Q. Once a sailor is sailing on a specific ship, is it customary for him to continue sailing on that same ship and sign new shipping articles from trip to trip so long as he wants to and is not fired?

A. Yes, sir.

Q. Would you say, Mr. Buckless, that there is nothing unusual then, if a sailor who has sailed with The Texas Company ships a number of times wants to continue sailing with Texas Company ships? A. Is there any reason?

Q. No. I say, would you say that there is anything unusual [718] about that? A. No.

(Testimony of Clarence Buckless.)

Q. Mr. Buckless, would you like to continue sailing on Texas Company ships? A. Yes, sir.

Q. How many Texas Company ships did you say you had sailed on?

A. Five, I believe. Let's see? Five.

Q. And you would like to continue sailing on Texas Company ships? A. Yes, sir.

Q. What is the reason you would like to continue sailing on Texas Company ships?

A. Well, there might be different reasons. I like to sail to Port Arthur, in and out, and one thing I like is The Texas Company ships give you a night off, where on most of the other ships you have to stand a watch at night, and there is companies that I just don't care about sailing with for reasons of my own.

Q. Do other lines come in and out of Port Arthur? A. Yes, sir.

Q. Do Texas Company ships operate, so far as you know, any differently from ships of other lines?

A. No. They are all practically the same in operation. They have a few different rules and regulations of work. [719]

Q. Do you bear any ill feeling toward The Texas Company? A. No, sir.

Q. Toward any of its officers or officials?

A. No, sir.

Q. Do you, in your own way, have any feeling whether or not you are a part of The Texas Company?

(Testimony of Clarence Buckless.)

Mr. Pipkin: Mr. Examiner, we will object to that. In the first place it is leading and calls for a conclusion of the witness.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) Do you feel any close connection between yourself and The Texas Company?

A. I feel I am when I am on the ship.

Mr. Pipkin: That is the same question. In addition to that the whole answer is not responsive. It could be answered "yes" or "no".

Trial Examiner Myers: Will you read the question and answer, Mr. Reporter.

(The last question and answer were read.)

Trial Examiner Myers: Denied.

Q. (By Mr. Martin) Did you testify, Mr. Buckless, that you kept working till noon the day you were fired from the "Nevada"? A. Yes, sir.

Q. After you had finished work at noon, what did you do? [720]

A. I took a bath, packed my clothes, and then went to the captain's office.

Q. Did you have a conversation with the captain? A. Yes, sir.

Q. As nearly as you can remember, what was said?

A. Well, as he give me my half day's pay, I asked him, I said, "Now, captain, I am really fired for union activities, am I not?"

He said, "I wouldn't say that."

He said, "When I sailed in the forecastle I was

(Testimony of Clarence Buckless.)

in a union myself. I belonged to the Union myself."

"Well," I said, "What do you think of the Union?"

He said, "A union is all right if it is run right."

I said, "What do you think of our union, the National Maritime Union?"

He said, "I don't think it is run right."

That is about all that was said between us.

Q. Did you testify yesterday concerning a discussion with Captain Swanson about overtime at Cat Island?

A. Yes, sir, I believe I did. That was after the discussion we had over the overtime from Cat Island and that following trip North he called me on the salon deck one morning.

Q. He called you?

A. He called me. He said, "Boatswain, I want to speak to you a minute." [721]

Q. Where were you?

A. I was just turning the men to.

Q. Down below him?

A. Yes, on the well deck.

Q. Did you go up?

A. I did and he said, "We are no doubt going to Cat Island the next trip and if we are in there on Saturday afternoon or Sunday, we are not paying any overtime. I am not paying any overtime unless you folks demand it."

So I said, "Captain, 'demanding' is a very big word and we are not demanding anything; only

(Testimony of Clarence Buckless.)

what we are supposed to get; and we are asking for that."

"Well," he said, "If we are in there on Saturday afternoon or Sunday and you demand this overtime, I am going to have each man sign a separate slip."

That is about all that was said.

Q. Did he give you any instructions to tell the crew?

A. Yes. He said, "You being delegate, on your next meeting you bring that up to the crew at the next meeting." [722]

Q. Mr. Buckless, about how many members of the N. M. U. were there on the "Washington" when you were on her in 1938?

A. I believe they were all very near but one or two. I think there was only one or two that was not.

Q. Almost a hundred per cent? A. Yes, sir.

Q. When you boarded her were they having union meetings?

A. No, sir. They had had them before, but they wasn't right at that time; for the past couple of weeks or so.

Q. Did they revive those meetings shortly after you got aboard?

A. Yes, sir. In fact, I called the first one right away as soon as we got aboard.

Q. Did anybody tell you why they weren't holding meetings? A. Yes, sir.

Q. Who told you?

(Testimony of Clarence Buckless.)

A. It was an ordinary seaman. I can't just think of his name right offhand. I asked him why they weren't having them and he said it seems the delegates were getting fired as fast as they were made delegates, so everybody was afraid then and they didn't hold any more.

Wukasch is the man's name.

Q. Wukasch? A. Yes, sir.

Q. Do you know how to spell it? [723]

A. No, I don't.

Q. Is it W-u-k-a-s-c-h?

A. I guess that is it.

Q. Had you known Wukasch before you boarded the "Washington"? A. No, sir.

Q. Now when you got on the "Nevada" in November, 1937, was George Hart on there?

A. No, sir.

Q. Do you remember where George Hart got on?

A. He got on in Port Arthur. I believe it was the trip following the Spain trip.

Q. Had you known George Hart prior to the time he got on board? A. No, sir.

Mr. Martin: That is all. Your witness, Mr. Van Dusen.

Cross Examination

Q. (By Mr. Van Dusen) Now, Mr. Buckless, I believe you stated that the first Texas Company ship that you were on is the SS "Shenandoah", is that right? A. No, sir.

Q. What did you say?

(Testimony of Clarence Buckless.)

A. The SS "Virginia".

Q. When was that?

A. I am not quite sure of the dates on that. It was either '25 or '26. [724]

Q. '25 or '26? A. Yes, sir, 1925 or 1926.

Q. How long were you on that ship, Mr. Buckless?

A. As near as I can remember it was about seven or eight months.

Q. Have you your discharge certificates?

A. No, I haven't. I lost them.

Q. The next ship you were on, Mr. Buckless, of The Texas Company, was that the SS "Shenandoah"? A. Yes, sir.

Q. Do you recall when you were on that ship?

A. Yes, sir.

Q. When?

A. I went aboard her on or about March 26, 1936, and left her on or about May 1, 1936.

Q. You were on there about two months; a little over two months? A. Something similar to that.

Q. Is that correct?

A. Yes, about two months.

Q. Now why did you leave that ship?

A. Of my own accord.

Q. What was the next time you went on a Texas Company ship?

A. On the SS "Washington" on or about February 20, 1937, to on or about March 8, 1938, when I left her—1937. [725]

(Testimony of Clarence Buckless.)

Q. That was a short trip, was it not?

A. Yes, sir, one trip.

Q. Would you say that was about a week?

A. That was about 16 days, I believe.

Q. About 16 days, you say?

A. Between 16 and 18 days.

Q. Why did you leave that ship, Mr. Buckless?

A. For medical treatment for my eye.

Q. Now what did you do in the approximately nine months' period between the time you left the "Shenandoah" voluntarily and the time you signed articles on the "Washington"?

A. I lived ashore.

Q. Were you employed on board any ship?

A. No, sir.

Q. Was it a vacation you were taking?

A. Yes, sir.

Q. Now what was the next Texas Company ship you signed articles on? A. The SS "Ayrian".

Q. Approximately what date?

A. On or about September 15 I joined her and left her on or about November 13, 1937.

Q. About how much time is that, Mr. Buckless?

A. About two months.

Q. Two months. [726] A. Yes, sir.

Q. Now why did you leave that ship?

A. I was fired.

Q. You haven't filed any complaint with the Labor Board regarding your discharge from that ship? A. No, sir.

(Testimony of Clarence Buckless.)

Trial Examiner Myers: What year was that?

A. 1937.

Q. (By Mr. Van Dusen) For what reason do you say you were fired?

A. He didn't give me any reason.

Q. Do you know the reason? A. No, sir.

Q. Now there is approximately a seven months' interval between the time you left the "Washington" and the time you signed articles on the "Ayrian". Were you sick all that time?

A. No, sir.

Q. What did you do all that period of time?

A. Well, I was ashore most of the time at home.

Q. Were you on any other ships?

A. Yes, sir.

Q. What ships?

A. The SS "Paulsboro", Standard Oil of New York.

Q. The SS "Paulsboro"? A. Yes, sir. [727]

Q. About how long were you on that ship, Mr. Buckless? A. About a month.

Q. Were you on any other ships?

A. Yes, sir.

Q. What other ships?

A. The SS "Broad Arrow", Standard Oil of New York; Socony-Vacuum.

Q. The SS "Broad Arrow"? Is that what you said? A. "Broad Arrow".

Q. About how long were you on that ship, Mr. Buckless?

(Testimony of Clarence Buckless.)

A. I was on her about three months, I believe; two and a half or three months more or less.

Q. About three months you say?

A. I believe.

Q. Why did you leave that ship, Mr. Buckless?

A. On my own accord.

Q. Why did you leave the "Paulsboro"?

A. I was fired.

Q. For what reason? A. Missing a watch.

Q. Were you on any other ship before you went on the SS "Ayrian" other than those two?

A. No, sir.

Q. Those are the only two ships you were on during that period? [728] A. Yes, sir.

Q. Now the next Texas ship you were on was the SS "Nevada", is that correct, Mr. Buckless?

A. I believe so.

Q. Well, you can look at your notes.

A. Yes, sir.

Q. After you left the "Ayrian"?

A. Yes, sir, after I left the "Ayrian".

Q. How long after you left the "Ayrian" did you sign articles on the SS "Nevada"?

A. Approximately four days.

Q. About four days? A. Yes, sir.

Q. Now how long was that trip, Mr. Buckless?

A. On the "Nevada"?

Q. Yes. A. The first trip was about a week.

Q. About a week? A. Yes, sir.

Q. Then what happened? Did you remain on that ship?

(Testimony of Clarence Buckless.)

A. Yes, sir. I was promoted to boatswain.

Q. And you signed new articles?

A. Yes, sir.

Q. And then you were on the "Nevada" until about April 18, is that right? [729]

A. April 18 on or about, 1938.

Q. That is about five months, isn't it, Mr. Buckless?

A. About six months.

Q. Now the next Texas ship you signed articles on is what, Mr. Buckless?

A. The SS "Washington".

Q. The SS "Washington"? A. Yes.

Q. About what date did you go on that ship?

A. I went on the "Washington" on or about June 2, 1938, and left her July 14, 1938.

Q. That is about six weeks?

A. Similar to that.

Q. Now there was an interval of a month and a half between the time you left the SS "Nevada" and the time you joined the SS "Washington". What did you do during that interval of time?

A. I was on the beach here in Port Arthur.

Q. You were not on any other ship?

A. No, sir.

Q. Now if all the time you were on Texas Company ships were totalled up it would be about 18 months, wouldn't it, approximately?

A. Perhaps about that. [730]

Q. Now I think you testified on direct examination that it was quite customary to sign shipping

(Testimony of Clarence Buckless.)

articles on all those trips? A. Yes, sir.

Q. You were on the trip to Spain with Mr. Rosen which started on or about January 10, 1938, were you not? A. Yes, sir.

Q. And you signed foreign articles, did you not?

A. Yes, sir.

Q. Then you made several coastwise trips on the "Nevada" after you came back to Port Arthur, did you not? A. Yes, sir.

Q. And you signed those coastwise articles?

A. Yes, sir.

Q. Now I show you shipping articles dated Port Arthur, Texas, April 13, 1938, and ask you if you signed those articles? A. Number five, yes, sir.

Q. Now that covers your last trip on the "Nevada" before you say you were discharged, does it not? A. I believe that is the one.

Q. You said that you thought you were discharged on April 18? A. Yes, sir.

Q. So these are the shipping articles covering that last [731] trip, is that correct? A. Yes, sir.

Q. Have you got your certificate of discharge from that trip? A. On the "Nevada"?

Q. Yes. April 18.

A. I don't believe the discharge is quite right. It might be. I am not sure.

Mr. Van Dusen: Well in the meantime I offer these articles in evidence.

Trial Examiner Myers: Any objection?

The Witness: Is this supposed to be the last trip?

(Testimony of Clarence Buckless.)

Mr. Van Dusen: April 18, the SS "Nevada."

The Witness: I have two of them.

Trial Examiner Myers: When is that dated?

Mr. Van Dusen: It is dated April 13th, but he says he was discharged April 18.

The Witness: I believe this is the one (handing a paper to counsel).

Mr. Martin: No objection.

Trial Examiner Myers: There being no objections I ask the reporter to please mark these articles as Respondent's Exhibit No. 10.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 10 for identification and was received in evidence.)

[732]

Mr. Van Dusen: For the record I will say that I would like to photostat these shipping articles and substitute a photostat for them.

Trial Examiner Myers: The respondent may furnish a photostat in place of the original.

Q. (By Mr. Van Dusen) Now, Mr. Buckless, this certificate of discharge covering that particular trip, showing "date and place of discharge, April 18, 1938, the SS 'Nevada'", and which is dated April 18, 1938, bears your signature, does it not?

A. Yes, sir.

Q. It also bears the signature of Captain Swanson?

A. Captain Swanson.

Mr. Van Dusen: I offer this in evidence.

Trial Examiner Myers: Any objection?

(Testimony of Clarence Buckless.)

Mr. Martin: No objection.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark that certificate of discharge in evidence as Respondent's Exhibit No. 11.

The respondent may substitute a photostat in place of the original certificate.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 11" for identification and was received in evidence.)

Q. (By Mr. Van Dusen) Now, Mr. Buckless, you signed shipping articles on the SS "Washington" on or about June 1, [733] 1938, did you not?

A. No, sir. June 2nd.

Q. I said "On or about."

A. On or about, yes.

Q. That was the trip that Mr. Rosen was on, isn't that correct? A. Yes, sir.

Q. I show you Respondent's Exhibit No. 5, shipping articles dated "Port Arthur, June 1, 1938" and which are the articles Mr. Rosen said he signed and ask you if you signed those articles.

A. Yes, sir, I did.

Q. Now that covers your trip on the SS "Washington" from which you say you were discharged, does it not? A. Yes, sir.

Q. Have you got your certificate of discharge?

A. Yes, sir (handing a paper to counsel).

Q. Now this certificate of discharge is dated July 14, 1938 and it shows "date and place of dis-

(Testimony of Clarence Buckless.)

charge, July 14, 1938, Port Arthur, Texas," and bears your signature, does it not? A. Yes, sir.

Q. It also bears the signature of Captain Bergman? A. Yes, sir.

Mr. Van Dusen: I offer this in evidence. [734]

Trial Examiner Myers: Any objection?

Mr. Martin: No objection.

Trial Examiner Myers: There being no objections I ask the reporter to please mark that certificate of discharge in evidence as Respondent's Exhibit No. 12.

The respondent may substitute a photostat in place of the original certificate.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 12" for identification and was received in evidence.)

(Testimony of Clarence Buckless.)

Q. (By Mr. Van Dusen) Now, Mr. Buckless, I believe you testified on direct examination that it was customary for seamen when they so desired to quit a ship and go to another, is that correct?

A. Yes, sir.

Q. That is quite a common practice?

A. It is.

Q. You did that yourself? A. Yes, sir.

Q. Now prior to the time you signed articles on the SS "Virginia" in 1925 were you on ships of any other company? A. Yes, sir.

Q. Please give me the names of the companies and the names of the ships.

A. That would be pretty hard to do because I have no discharges. I could tell you some of the companies. Standard [735] Oil——

Q. (Interrupting) Well suppose you give me some of the companies.

A. Standard Oil of New York.

Q. Standard of New York? A. Yes, sir.

Q. Do you remember any of the ships you were on? This is prior to 1925 now.

Mr. Wright: Mr. Examiner, I would like to offer objections to the immateriality of this, unless there is some materiality shown.

Mr. Van Dusen: Well, may I state what it is?

Trial Examiner Myers: Yes.

Mr. Van Dusen: ' On direct examination Mr. Martin endeavored to show that Mr. Buckless was

(Testimony of Clarence Buckless.)

tied up to Texas Company ships. Now I am going to show that he was not.

Trial Examiner Myers: Objection overruled.

Q. (By Mr. Van Dusen) Will you please give me the names. The Standard of New York you said? A. Yes, sir.

Q. Can you name some of the ships please?

A. No, I couldn't name exactly the ships I was on before that.

Q. Now you have been a seaman for twenty years, haven't you, Mr. Buckless? [736]

A. Yes, sir.

Q. You have been an A. B. for twenty years, haven't you? A. Yes, sir.

Q. And you don't remember any of the ships prior to 1925?

A. Well there is some, but I couldn't say whether it was before or after 1925.

Q. Well how far back do your discharges go?

A. About two years; a year and a half; two years.

Q. Well name some of the ships of the Standard of New York that you were on.

A. The "Levant Arrow." That is prior to 1925 though.

Mr. Wright: Mr. Examiner, I would like to urge objection to this. It is immaterial. Now if its purpose is to show that this man was not tied to The Texas Company vessels or The Texas Company payroll, it is sufficient, I think, to show that he was working for another company. [737]

(Testimony of Clarence Buckless.)

Trial Examiner Myers: Well, I overrule the objection. Will you proceed, please.

Q. (By Mr. Van Dusen) What was the name of that ship? A. The "Levant Arrow".

Q. This is prior to 1925? A. Yes, sir.

Q. Do you know about how long you were on that ship? A. No, sir.

Q. Approximately? A. No, sir.

Q. Well, say, six months?

A. I wouldn't say nothing, as I forget right now the dates.

Q. You remember that you were on the SS—

A. (Interrupting) I was on her, yes, sir.

Q. I say you remember you were on the SS "Virginia" in 1925?

A. Yes, sir, on or about 1925 or 1926.

Q. That is thirteen years ago? A. Yes, sir.

Q. And you said you were on there approximately seven or eight months?

A. Yes, sir, to the best of my knowledge. I am not sure.

Q. Now, do you remember the ship you were on just preceding the "Virginia"?

A. No, I really don't. [738]

Q. And your memory only starts with The Texas Company ships, is that it?

Mr. Wright: Mr. Examiner, may I have my objection to all this line of questioning?

Trial Examiner Myers: You may have objection to the entire line of inquiry and the same ruling.

(Testimony of Clarence Buckless.)

Q. (By Mr. Van Dusen) What was that? What did you say?

A. No, I just can't remember. I have been on quite a few different ships and I don't remember the one I was on before that or even after.

Q. But you do remember you were on the "Virginia" don't you? A. Yes, sir.

Q. And you don't remember the ship immediately preceding? A. No, sir.

Trial Examiner Myers: Why is that?

A. Well, I have been on so many of them that it might have been the Pure Oil. It might have been——

Trial Examiner Myers: I mean why do you remember The Texas Company ships?

A. Because I knew they were going to be brought up and I figured back as near as I could to remember those.

Q. (By Mr. Van Dusen) But you haven't got your discharges for more than two years, have you?

A. No.

Q. So what do you have to refresh your recollection? [739]

A. I remembered that I was in The Texas Company at that time.

Q. You just thought back and you remembered The Texas Company ships. Now, can you think back and remember some of the other ships?

A. Not right now I couldn't. I suppose I could in time. [740]

(Testimony of Clarence Buckless.)

Q. Will you think about that over the week end?

A. I will try to.

Q. Name some of the companies then prior to 1935, Standard of New York?

A. United Fruit Company.

Q. Do you know approximately how long you were with the United Fruit Company?

A. No.

Q. Well, was it a short time or long time?

A. Well, perhaps a year.

Q. What is that? A. Perhaps a year.

Q. Perhaps a year. About how long would you say you were with the Standard of New York prior to 1935? A. I really don't know.

Q. Well, approximately.

A. It might be six months, or maybe two years.

Q. Well, what other company?

A. I was on the Argonaut Line.

Q. Argonaut Line? A. Yes, sir.

Q. About how much time did you spend with them?

Mr. Wright: Mr. Examiner, I submit that this is becoming ridiculous.

Trial Examiner Myers: Objection overruled.

[741]

A. I have no discharges. I have lost them all. Perhaps two months.

Q. You lost them, but you still go back thirteen years on The Texas Company ships. I just want to know.

(Testimony of Clarence Buckless.)

A. I really don't know there. I just put down on or about that time. I was not sure what time I was on the "Virginia".

Q. All right. Argonaut Line. Any other line?

A. Molasses Tanker Corporation.

Q. What?

A. Molasses Tanker Corporation.

Q. Do you remember about how long you were with them?

A. Two or three months.

Q. Two or three months?

A. Yes, sir.

Q. Any other company?

A. No, I can't think of any more right now.

Q. All right now, after you left the "Virginia", which was sometime either 1925 or 1926, there was a period of about ten years before you went on a Texas Company ship, isn't that correct?

A. Yes, sir.

Q. Now, do you remember any ships you were on in that interval of time?

A. Well, I gave you one there, the "Levant Arrow". I didn't say I was on her prior to 1925.

Q. All right. But you were on the Standard of New York [742] ship prior to 1925?

A. Yes, sir.

Q. The "Levant Arrow" was one after you left the "Virginia".

A. Yes, sir.

Q. Do you remember how long you were on that ship?

A. No, sir.

Q. It was after you was on the "Virginia"?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. You were on her after you were on the "Virginia"? A. Yes, sir.

Q. You have no idea at all how long?

A. No, sir.

Q. That was the Standard of New York ship?

A. Yes, sir.

Q. What other ships were you on after you left the "Virginia"?

A. I can't think of any more right now.

Q. What companies? What companies did you work for after you left the "Virginia"?

A. Sabine Towing.

Q. Standard of New York?

A. Sabine Towing.

Q. Did you also work for the Standard of New York? A. Yes, sir. [743]

Q. Any other companies? A. Pure Oil.

Q. Do you remember any of the ships of the Pure Oil that you were on?

A. Yes, sir, I was on the "W. E. Hutton".

Q. Do you remember about how long you were on that ship? A. No, I don't.

Q. Any other ships of the Pure Oil?

A. No, sir.

Q. Sabine Towing, do you remember the ship you were on then?

A. "Los Alamas", now called the "R. W. McIlvian".

Q. Do you know how long you were on that ship? A. About three months, I believe.

(Testimony of Clarence Buckless.)

Q. Any other company? A. No, sir.

Q. Just those three companies during that ten year period?

A. That is all I can think of, yes, sir.

Q. This was after you left the "Virginia"?

A. Yes, sir.

Q. Now, during that ten year period which company would you say you spent the most time with of those three companies? There are just three.

A. I really wouldn't know.

Q. No idea at all? [744]

A. No idea at all.

Q. Would you say you spent most of the time with the Pure Oil? A. I wouldn't know.

Q. Now, you were on the SS "Washington", approximately the end of February to the 8th of March, is that correct, Texas Company ship?

A. What year?

Q. 1937, end of February? A. Yes, sir.

Q. That was a short trip, wasn't it?

A. Yes, sir.

Q. Now, you were not on a Texas Company ship until the middle of September of that year, is that correct? A. Yes, sir.

Q. There was about a seven months interval there? A. Yes, sir.

Q. All right, any other ships in that seven months' time? A. Yes, sir.

Q. Name those ships?

A. SS "Paulsboro".

(Testimony of Clarence Buckless.)

Q. What company is that?

A. Standard Vacuum.

Q. Standard of New York, is that?

A. Yes, sir. [745]

Q. About how long were you on that ship?

A. Well, I went on her on or about April 6, 1937, and got off on or about April 30, 1937.

Q. A short trip? A. Yes, sir.

Q. Were you on any other ship?

A. Yes, sir, the SS "Broad Arrow".

Q. That is also a Standard of New York ship?

A. Yes, sir.

Q. How long were you on that ship?

A. About three months.

Q. Any other ships in that period of time?

A. No, sir.

Q. That takes up about seven months, doesn't it, seven months interval? A. How is that?

Q. I say, that takes up about a seven months interval between the time you left the "Washington" and got on the "Broad Arrow", is that right?

A. I was on her about three months, on the "Broad Arrow". The rest of the time I was at home.

Q. Now, were you on the SS "Comet" from 1928 through 1930? A. I have been on her.

Q. Were you? A. I believe so. [746]

Q. That is a Standard of New York ship, isn't it? A. Yes, sir.

Q. That is about two years you were on that

(Testimony of Clarence Buckless.)

ship, isn't it? Is that right? A. I don't know.

Q. I say, 1928 to 1930, about two years?

A. About two years, yes, sir.

Q. Now, in 1930 weren't you on the "R. W. McIlvian"? A. Yes, sir.

Q. That is a Standard of New York ship, is it not? A. No.

Q. It is a Sabine Towing Company ship, is it not? A. Yes, sir.

Q. How long were you on that ship?

A. About three months.

Q. About three months? A. Yes, sir.

Q. Now, in 1931, were you on the SS "Ario"?

A. Yes, sir.

Q. That is a Standard of New York ship, isn't it? A. Yes, sir.

Q. You were on there about a year, weren't you?

A. I really wouldn't know just the date. [747]

Q. Well, 1933 isn't so far back.

A. I was on her quite a long time.

Q. Would you say a year would be approximately correct? A. Yes.

Q. Now in 1933 weren't you on the SS "Berkinhead"? A. Yes, sir.

Q. That is a Standard of New York ship, isn't it? A. Yes, sir.

Q. Weren't you on that ship from 1933 through 1935? A. Practically.

Q. That is about two years, isn't it?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Now, Mr. Buckless, you spent a good deal of time on Standard of New York ships, didn't you?

A. Yes, sir.

Q. Spent a good deal more time on Standard of New York ships than you did on Texas Company ships, didn't you?

A. Yes, I guess I have.

Q. Don't you like the Standard Oil of New York ships?

Mr. Wright: Mr. Examiner, I object. The issue is what he thought then.

Q. (By Mr. Van Dusen) Did you then like the Standard Oil of New York ships?

Mr. Wright: I object to its immateriality.

Mr. Van Dusen: I am using his own language.

[748]

Mr. Wright: I have no objection if he places it back to that time.

Trial Examiner Myers: The objection is withdrawn. Will you answer the question?

Mr. Van Dusen: Read the question.

(The question was read by the reporter.)

Trial Examiner Myers: Did you like the Standard of New York ships then?

A. Yes, sir.

Q. (By Mr. Van Dusen) Were you ever discharged from any of the Standard of New York ships?

A. Yes, sir.

Q. How many times?

A. Well, one is all I can remember of.

Trial Examiner Myers: You mean discharged or fired?

A. Fired.

(Testimony of Clarence Buckless.)

Q. That is what I am getting at.

A. Fired.

Q. (By Mr. Van Dusen) Were you ever fired?

A. Fired, yes, sir.

Q. Which ship?

A. The "Paulsboro" is the only one I can remember.

Q. What was the reason?

A. Missing a watch.

Q. Were you fired from any other Standard of New York ships? [749]

A. Not that I can remember, no, sir.

Q. Were you fired from any other ship?

A. No, sir.

Q. You say you were fired for missing a watch. Why did you miss the watch?

A. I was out of town and couldn't get back.

Q. You mean the ship was in port?

A. The ship was at "Paulsboro", and I was in Philadelphia, and couldn't get back in time to stand the watch.

Q. You didn't miss the ship though?

A. No, sir.

Q. Do you remember the last ship of the Standard of New York you were on?

A. The "Broad Arrow".

Q. When did you leave that ship?

A. July 13, on or about, 1937.

Q. Why did you leave that ship?

A. Of my own accord.

(Testimony of Clarence Buckless.)

Q. And the last ship of the Standard of New York you were on prior to that time was the SS "Berkinhead", wasn't it?

A. SS "Paulsboro".

Q. I mean prior to that.

A. Prior to that time.

Q. What time were you on the "Paulsboro"?

A. On or about April 16, 1937, I joined her, and left her [750] on or about the 30th, 1937.

Q. Why did you leave the ship at that time?

Trial Examiner Myers: He was fired.

A. I was fired.

Q. (By Mr. Dusen) I am sorry. That is the one you were fired from? A. Yes, sir.

Q. Why did you leave the SS "Birkinhead"?

A. Of my own accord.

Q. Of your own accord? A. Yes, sir.

Q. I am sorry I have to go into this.

A. That is all right.

Q. When you left the "Paulsboro", or rather the "Broad Arrow", that is the last ship you were on, in July, 1937, what was the next ship you went on? A. I believe the next ship was the "Ario".

Q. That was a Texas Company ship?

A. Yes, sir.

Q. The last ship of the Standard of New York you were on before you went on the "Shenandoah" was the "Berkinhead"? A. I believe so.

Q. And at that time you had been on Standard of New York ships for approximately seven years,

(Testimony of Clarence Buckless.)

on and off? A. I believe so. [751]

Q. In fact, almost continuously, isn't that correct? A. Yes, that is about right.

Q. You were not fired from any of those ships, were you? A. No.

Q. Why then did you shift to the "Shenandoah"?

Mr. Wright: Mr. Examiner, I object because it is immaterial.

Trial Examiner Myers: Overruled.

A. I was in Baltimore at the time. I was shipped out of the Standard Oil office onto the "Shenandoah", Texas Company.

Q. You had a good reputation as an A. B. on the Standard of New York ships, didn't you?

A. Yes, sir.

Q. They would have taken you back very readily, wouldn't they? A. Yes, sir.

Mr. Wright: I object to that. It calls for a conclusion. I move that it be stricken.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) Why didn't you want to stay with them?

A. Because they shipped me on the "Shenandoah"?

Q. They shipped you on the "Shenandoah"?

A. The Texas Company phoned down there for a man, and I was the next man available. They asked me if I would go aboard [752] the "Shenandoah", and I said, "Yes, sir." I was in need of a job, and I took it.

(Testimony of Clarence Buckless.)

Q. You had a job.

A. I was on the beach at the time I shipped on the "Shenandoah".

Q. You mean they laid up some ships?

A. No. I was on the beach. I had paid off on the beach.

Q. Voluntarily. A. Voluntarily, yes, sir.

Q. Why did you voluntarily leave the Standard of New York ships?

A. Because I wanted to. It is my own privilege.

Q. But you still liked the Standard of New York at that time? A. Certainly.

Q. After being on Texas ships did you learn to like Texas ships better than Standard of New York ships? A. Perhaps.

Q. Well, you know.

A. Yes, I like the run. I like to run into Port Arthur.

Q. Do you like the manner of operation?

A. They were practically the same.

Q. How about the officers?

A. There was not much difference to me.

Q. Treat you just as well? [753]

A. Just about the same.

Q. Same sort of complaints on both ships, ships of both companies? A. Practically the same.

Mr. Martin: Mr. Examiner, the witness has not yet admitted any complaints that I remember of.

Mr. Van Dusen: He has admitted complaints on Texas ships.

Trial Examiner Myers: Objection overruled.

(Testimony of Clarence Buckless.)

Mr. Van Dusen: Complaints about food, overtime and so forth.

Mr. Martin: I thought you were referring to complaints about his work.

Mr. Van Dusen: Oh, no.

Mr. Wright: Mr. Examiner, I would like to urge my objection again to the immateriality and irrelevancy of the question.

Trial Examiner Myers: Overruled.

Mr. Van Dusen: Now will you read that particular question again?

(The question was read by the reporter.) [754]

Q. So, so far as you are concerned they are practically the same, except you had had longer service with the Standard of New York, is that correct? A. Yes, sir.

Q. Now, after you left the "Shenandoah" you went back on a Standard of New York ship, didn't you in 1937, on the "Paulsboro"? A. Yes, sir.

Q. And you were also on the "Broad Arrow"?

A. Yes, sir.

Q. And later went to The Texas Company ships?

A. Yes, sir.

Q. Now, right at this moment do you prefer Texas ships to the Standard Oil of New York ships?

A. Yes, I believe I do.

Q. Why?

A. Because they are running into Port Arthur.

Q. Do the other ships run into Port Arthur?

A. Very seldom.

(Testimony of Clarence Buckless.)

Q. Standard of New York?

A. They run into Beaumont.

Q. It is right close to Port Arthur, isn't it?

A. It is a pretty long walk.

Mr. Wright: I object.

Mr. Van Dusen: Maybe, Mr. Wright will concede that. [755]

Mr. Wright: Sure I will concede it as close.

Q. (By Mr. Van Dusen) So when you sift it down, Mr. Buckless, you are not tied up to a Texas Company ship any more than you are to a Standard of New York ship, to be frank isn't that correct, frankly?

A. No, I was just sailing in there, and I like to sail with them, that is all.

Q. You shifted from one to the other, and you spent more time with the Standard of New York, isn't that right?

A. I did.

Q. So it doesn't matter to you?

A. It does right now. I would rather sail on The Texas ships.

Q. Is the Standard of New York a union ship?

A. Yes, sir.

Q. Got a contract with the N. M. U.?

A. I believe so.

Q. The Texas Company has not?

A. No, sir.

Q. Isn't the real reason you want to get on The Texas ships so you can organize The Texas ships?

A. No, not exactly.

(Testimony of Clarence Buckless.)

Mr. Wright: I object for the reason that it is immaterial why he wants to get on any ship. He has a perfect right to get on any ship he chooses. If he wants to go back to The [756] Texas Company, that is his business.

Mr. Van Dusen: I think Mr. Wright is giving very good testimony here.

Mr. Wright: Thank you.

Mr. Van Dusen: But we are talking about union activities. That is the heart of this case. He has admitted here that the ships were practically the same, and that he has spent more time on ships of the Standard of New York, and under the circumstances there is more reason for his wanting to be on the Standard of New York ships; and I am asking if the real reason that he wants on The Texas Company ships is not that he wants to organize The Texas Company ships.

Trial Examiner Myers: He has answered your question. A. Yes, sir.

Mr. Van Dusen: What was the answer?

Trial Examiner Myers: He said "no".

Q. (By Mr. Van Dusen) You stand on that answer? A. Yes, sir.

Mr. Van Dusen: Will you read that answer?

(The answer was read by the reporter.)

Q. (By Mr. Van Dusen) Can you answer that "yes" or "no"?

A. I would like to have that question read again please.

(Testimony of Clarence Buckless.)

(The question was read by the reporter.)

Mr. Wright: I want to urge my objection.

Trial Examiner Myers: Overrule the objection.

[757]

Q. (By Mr. Van Dusen) What is your answer?

A. It is still, no.

Q. It is "no" you say? A. Yes, sir.

Q. Now, Mr. Buckless, you testified on direct examination regarding certain grievances on the "Nevada" and the "Washington" which the crew had, such as complaints about food, overtime and so on; and you referred on one or two occasions to the working rules, is that correct?

A. Yes, sir.

Q. Were the working rules posted on the "Nevada" and the "Washington"?

A. Yes, sir.

Q. Where were they posted?

A. In the messroom.

Q. In the messroom?

A. Yes, on the bulletin board.

Q. I suppose you read them? A. Yes, sir.

Q. Did Mr. Rosen read them?

A. Yes, sir, I believe he did.

Q. You know they were there?

A. Yes, sir.

Q. You were referring to those working rules on direct examination when you mentioned your talk with the captain? [758] A. Yes, sir.

Mr. Martin: Mr. Examiner, I move to strike the

(Testimony of Clarence Buckless.)
question whether Mr. Rosen read them.

Q. (By Mr. Van Dusen) Did you ever see Mr. Rosen reading the working rules?

A. The ones of 1937, yes, I did.

Mr. Martin: Withdraw my objection.

Q. (By Mr. Van Dusen) Look this over, Mr. Buckless, and tell me if those are the rules you saw posted on the "Nevada" and the "Washington"?

A. No, this does not seem to be the same.

Trial Examiner Myers: He says "no".

A. They don't seem to me they are. They might be; I am not sure.

Q. Well, look them over. I just want to know whether those are the working rules you saw posted?

A. Some of the names look the same.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

A. I cannot identify them.

Q. (By Mr. Van Dusen) All right. There were working rules posted however?

A. Yes, sir.

Q. Were there not? A. Yes, sir. [759]

Q. That is, on this trip on the "Nevada" to which you have referred, and also on the "Washington"?

A. Yes, sir.

Q. You recognize the date, October 1, 1930?

A. I never noticed the date.

Q. But you do recognize some of the provisions?

A. Yes, sir.

Q. Did you ever see Mr. Zinkiewicz reading the

(Testimony of Clarence Buckless.)

working rules that were posted?

A. Well, no, I never noticed.

Q. Practically everybody on the boat read them, didn't they?

Mr. Martin: On which boat?

Mr. Van Dusen: On the "Nevada" and the "Washington", at the time you were on there?

A. Zinkiewicz was not on the "Nevada" with me.

Q. Zinkiewicz was on the "Washington"?

A. Yes, sir.

Q. Did you see him reading them?

A. No, sir, I wouldn't say that he did. He might have.

Q. Have you ever discussed the working rules with him? A. Yes.

Q. Did you ever discuss them with Mr. Rosen?

A. Yes, sir.

Q. Discuss them at your meetings?

A. Yes, sir. [760]

Q. Now, Mr. Buckless, I believe you testified that when you and other members of the crew that did not like the particular conditions, such as conditions regarding screens and buckets, and when you thought you were entitled to overtime, representatives were chosen to see the captain or the chief mate, Mr. Tranberg, and this Captain Swanson on the "Nevada" and Tranberg on the "Nevada", and Bergman and Johanson on the "Washington", is that correct? A. Yes, sir. [761]

(Testimony of Clarence Buckless.)

Q. They always listened to your grievances, did they not? A. Sometimes.

Q. Well, I mean they talked to you about them, did they not?

A. I can recall one time when Gordon Rosen and Zinkiewycz were delegated to speak for me on the "Washington", and the captain refused to talk to them about it.

Q. Were you there at the time?

A. I was standing right by the side of them.

Q. You were right by the side of them?

A. Yes, sir.

Q. Was the captain busy?

A. The captain was not. He said he would talk to me, but not to any delegate. He wouldn't listen to them.

Q. Was he always willing to listen to you when you had a personal grievance?

A. Personally.

Q. That is, both captains were?

A. Yes, sir.

Q. And on these occasions to which you have referred on your direct examination, when you were either along or with Rosen went to see these officers, they spoke to you on those occasions, didn't they?

A. Yes, sir.

Q. Sometimes they refused to give you what you wanted, and [762] other times they gave you what you wanted? A. Yes, sir.

Q. And you asked for overtime on one or two

(Testimony of Clarence Buckless.)

occasions, and they first objected, and later gave you overtime? A. In some cases.

Q. You say in some cases? A. Yes, sir.

Q. Not in every case? A. No, sir.

Q. The captain was master of the ship?

A. Yes, sir.

Q. You didn't expect to get everything you asked for?

A. I was not asking for anything that I didn't think we ought to get.

Q. You were asking for something you thought you were entitled to have? A. Yes, sir.

Q. And you thought you were entitled to it?

A. Yes, sir.

Q. He didn't think you were entitled to it?

A. He did not.

Q. And he was master of the ship, wasn't he?

A. He was the master of the ship.

Q. Now, on the other ships on which you were employed, did you ever have occasion to go to the officers of those ships [763] with any particular grievances? A. No, sir.

Q. Never? A. Of this company.

Q. Any other companies? A. Never.

Q. Never had any complaints?

A. Never had any complaints.

Q. Perfect ships?

A. Not exactly perfect, I wouldn't say, but I never was——

Q. Did the members of the crew ever have griev-

(Testimony of Clarence Buckless.)

ances? A. They might have.

Q. Do you know, of your own knowledge?

A. Well, I know—yes, I will take that back. On the “Broad Arrow” I was delegate there.

Q. I see. Did you have occasion to go to the captain or any officers? A. Yes, sir.

Q. Regarding grievances? A. Yes, sir.

Q. Did he listen to you? A. He did.

Q. Did he give you what you wanted?

A. He gave us everything we wanted.

Q. Do you remember any other occasion? [764]

A. No. That is the only ship I was delegate on.

Q. On the other ships do you know whether other delegates or other representatives of the crew went to see the officers of the ship? A. No.

Q. Do you know of your own personal knowledge? A. No.

Q. When did you say you were a member of the I. S. U.? A. Up until 1934.

Q. When did you join the I. S. U.?

A. I think around 1920.

Q. Were you active in the I. S. U.?

A. Yes, sir.

Q. Did the I. S. U. hold meetings aboard ship?

A. Very seldom. I never seen one.

Q. Did they have delegates?

A. Not particular ships.

Q. How is that?

A. Not particular ships, that I can remember. They might have had them on some ships.

(Testimony of Clarence Buckless.)

Q. Any time on those ships was there any question in your mind that you were entitled to overtime, and you didn't receive it from the captain of the ship? A. No.

Q. Do you remember? [765]

A. No, I never did.

Q. All right. Do you recall the crew having any grievances? A. No.

Q. You do not? A. No, sir.

Q. Does that apply to Standard of New York ships? A. Yes, sir.

Q. They were better ships than Texas Company ships, weren't they? A. I wouldn't say.

Q. You had a lot of grievances when you were on The Texas Company ships for a short period of time, did you not? A. Yes.

Q. But you had very few, if any, on the Standard of New York ships, is that correct?

A. Yes, sir.

Q. And yet you sailed on The Texas Company ship?

Mr. Wright: I object for the reason that it is argumentative.

Trial Examiner Myers: That is a little argumentative.

A. Ships are not all alike. There might be ships in The Texas Company that we would not have any trouble with.

Q. (By Mr. Van Dusen) But didn't you on direct examination say that you wanted to get back

(Testimony of Clarence Buckless.)
on the SS "Nevada" or the SS "Washington"?

A. Yes, sir. [766]

Mr. Martin: Mr. Examiner, I might clarify the record. Mr. Buckless testified that he would like to get back on Texas Company ships.

Trial Examiner Myers: I think that was the testimony.

Mr. Van Dusen: I will check that during the noon recess.

Trial Examiner Myers: Well, let's have no more discussion about it. Do you object to the question.

Mr. Martin: I object to any incorrect description of the direct examination.

Trial Examiner Myers: I know it was unintentional. Do you want to withdraw it?

Mr. Van Dusen: I think that is what he testified.

Trial Examiner Myers: I mean, if there was a mistake.

Mr. Van Dusen: If there was a mistake, yes. I will ask it both ways.

Trial Examiner Myers: Ask it both ways, and I will overrule the objection. Will you answer the question?

Mr. Van Dusen: Read the question please.

(The question was read by the reporter.)

Q. What? A. I said yes.

Q. Now, it was those two ships where you had all those grievances, isn't that right?

Mr. Martin: Mr. Examiner, my last question

(Testimony of Clarence Buckless.)

was with- [767] drawn as I understand it upon your assertion that you would ask the question both ways. Now, you have asked it only one way.

Mr. Van Dusen: I said, did you testify.

Trial Examiner Myers: Do you mean you wanted to go back to The Texas Company ships, or those particular ships? What do you mean?

A. I said in my statement I would like to go back aboard the SS "Nevada".

Q. All right. A. In the statement. [768]

Q. (By Mr. Van Dusen) You would like to go back on the SS "Washington" if you had a chance?

A. (The witness hesitating) Yes.

Q. You would? A. Yes, sir.

Mr. Martin: May I ask a question?

Trial Examiner Myers: Hold your question until redirect examination.

Q. (By Mr. Van Dusen) Now one of those ships was the SS "Washington" that you had complaints about the food? A. Yes, sir.

Q. Did you ever have any complaints about food on the Standard of New York ships?

A. No, sir.

Q. You would like to go back on a ship where the food was not so good?

A. Didn't I make the statement that the food got better?

Q. Yes, but it was bad, wasn't it?

A. Yes, but we had good food when I left.

(Testimony of Clarence Buckless.)

Mr. Wright: Mr. Examiner, this whole line of questioning, I think, is argumentative. I don't see any value in arguing with the witness. He says he wants to get back on a Texas Company ship.

Mr. Van Dusen: Mr. Wright, I want to know what the witness thinks about it, not you. [769]

Trial Examiner Myers: Overrule the objection. Proceed, Mr. Van Dusen.

Mr. Van Dusen: Will you repeat that last question, please?

(The question was read by the reporter.)

Q. Now you say you were fired from both ships?

A. Yes, sir.

Q. And you still would like to work under the same officers who fired you? A. Yes, sir.

Q. Now, to sum it all up, despite the fact that you had few, if any, grievances on the Standard of New York ships, and despite the fact that you had numerous grievances on The Texas ships, "Nevada" and "Washington" and despite the fact that you were fired from these two ships, you would still prefer to go on either of those ships to a Standard Oil ship?

Mr. Wright: Mr. Examiner, that is a very fine speech on the part of Mr. Van Dusen, but I would like to object upon the ground that it is argumentative.

Trial Examiner Myers: Overruled. Please answer.

A. Yes, I would rather go back on their ships.

(Testimony of Clarence Buckless.)

Q. All right. A. Yes, sir.

Mr. Van Dusen: Mr. Examiner, Judge Williams thought that since I had finished that particular line of questioning we [770] might recess.

Trial Examiner Myers: Do you want to recess now for lunch? That is agreeable to me, but I must insist that everybody be back here a quarter to one on time.

Mr. Martin: Will you make it 1:30, Mr. Examiner?

Trial Examiner Myers: 1:30. What about sitting this evening, and what about sitting tomorrow? What do you gentlemen want to do about that?

Mr. Van Dusen: Let me talk to Mr. Martin.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: We will stand adjourned until 1:30.

(Thereupon, a recess was taken until 1:30 o'clock p. m.) [771]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Trial Examiner Myers: Are you ready?

Mr. Van Dusen: Yes.

(Testimony of Clarence Buckless.)

CLARENCE BUCKLESS

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Q. (By Mr. Van Dusen) Mr. Buckless, I believe you testified that on your trip to New Haven a new ordinary seaman came on board, one Patrick Dalton? A. Yes, sir.

Q. That was on the SS "Nevada"?

A. Yes, sir.

Q. Do you know the approximate date of that?

A. No, I don't.

Q. And I believe you testified that you met him just about as he came aboard?

A. In the passageway.

Q. In the passageway? A. Yes.

Q. And the first question you asked him was whether he had a Union card, is that right?

A. I asked him who he was and what work he done; you know, what he was aboard the ship for. He said he was the new [772] ordinary.

Q. The new what? A. Ordinary.

Q. Then did you ask him about his Union affiliations?

A. I asked him if he carried a Union book.

Q. And he showed you the so-called Fink book or Copeland book? A. Yes, sir.

Q. And then you said to him, did you not, "That

(Testimony of Clarence Buckless.)

doesn't go here. This ship is one hundred per cent Union and we don't want anybody on here but Union men," is that right? A. Yes, sir.

Q. Well, he was a Union man, wasn't he?

A. No, sir.

Q. What does a Copeland book represent; a Fink book? Did he say he was an I. S. U. man?

A. No. That was the first ship he was ever on.

Q. So you said, "We don't want anybody on here but Union men," did you not?

A. Yes, sir.

Q. Were you hiring the ordinary seamen for that boat? A. No, sir.

Q. Did you have any authority from the captain or any of the officers to make that statement to Mr. Dalton? A. No, sir. [773]

Q. Do you believe that the captain and officer can hire any ordinary seamen they desire?

A. I believe so.

Q. Well then that was just your method of organizing the ship? A. Yes, sir.

Q. To take over the hiring, isn't that right?

A. No, sir.

Q. Isn't that what you were trying to do?

A. I was not hiring him.

Q. You said "That doesn't go here. This ship is one hundred per cent Union and we don't want anybody on here but Union men," is that right?

A. That is right.

Q. That comes pretty close to indicating that

(Testimony of Clarence Buckless.)

you are hiring the men, doesn't it? A. No, sir.

Q. Is it the policy of the Union to make statements like that to men who come aboard ship?

Mr. Wright: Mr. Examiner, I object to that for several reasons, one of which is that it is irrelevant and immaterial and in the second place the Union is not on trial here for its policy, good or bad.

Trial Examiner Myers: Sustained.

Mr. Van Dusen: May I make a statement for the record please? [774]

Trial Examiner Myers: Certainly.

Mr. Van Dusen: I was ready for this particular objection. I want to point out that yesterday, Mr. Examiner, you permitted Mr. Blasingame to testify regarding the policy of the Union and I think I ought to have the same right.

Trial Examiner Myers: Well, I don't believe I did.

Mr. Van Dusen: Well, may I read it?

Trial Examiner Myers: Certainly.

Mr. Van Dusen: Mr. Martin was asking the questions and he asked this question:

"Mr. Blasingame, do you know what the Union thinks of places like Mrs. Mitchal's?

"Mr. Van Dusen: I object to that.

"Mr. Martin: He can answer yes or no.

"Mr. Van Dusen: He can't testify as to what the Union thinks.

"Mr. Wright: He is a member of it.

"Trial Examiner Myers: I don't know why

(Testimony of Clarence Buckless.)

you insist upon pursuing this. I will take judicial notice of it that they frown upon any procedure of registering with anybody except through the Union Hall. Now we have Mr. Gordon testifying to it and we have this witness who testified to it and we have Ames' testimony.

"Trial Examiner Myers: All right. Will you please [775] answer this question, Mr. Witness."

Trial Examiner Myers: Well you failed to read that part of the testimony where I said I would allow testimony as to what the Union members did and wouldn't allow any testimony as to the policy of the Union. Now I even said "That is the dividing line."

Mr. Van Dusen: Well he was permitted to testify as to what the Union thinks.

Trial Examiner Myers: Well that might have slipped by. I didn't intend that to go in.

Mr. Wright: Mr. Examiner, the argument, it seems to me, is simply this—

Mr. Van Dusen: May I finish, Mr. Wright? May I finish?

Mr. Wright: Go ahead.

Mr. Van Dusen: Let me point to another place in the record:

"Question: Who does the hiring for The Texas Company?"

(Testimony of Clarence Buckless.)

“Answer: Through there?”

“Question: Yes.

“Answer: Mr. Meyers.

“Question: Why didn’t you register there?”

“Answer: I couldn’t see any use in registering, because Mr. Meyers, he always came there to pick up his men and he didn’t come there to pick me up.

“Question: Why not? [776]

“Answer: Because he knows me. He said he did anyhow.

“Question: Does the Union have any policy about such places as Mrs. Mitchal’s?”

“Mr. Williams: Now we object to that. I don’t think that it is written in the law yet that they can absolutely prevent people from registering at other places where they might get work.

“Trial Examiner Myers: I will overrule the objection.”

Trial Examiner Myers: Well, I will add here that as long as I allowed them to ask that question I will reverse myself now and allow you to ask this question.

Mr. Wright: Mr. Examiner, the Union wants this exception in the record and I am sure that the Board does too to the ruling of the Examiner in that connection and I should like to point out in the record that the purpose for which various types

(Testimony of Clarence Buckless.)

of testimony with respect to the policy of the Union was admitted is entirely different in the two cases.

In the cases pointed out by Mr. Van Dusen the situation was that there was some question with respect to whether or not members of the Union were encouraged or discouraged from soliciting certain kinds of jobs in certain kinds of ways. This Union is not on trial for its conduct, good or bad; it is not on trial for its policy, good or bad, and certainly it does not lie within the province of the respondent [777] company to undertake to dictate the policy of the Union or to question the policy of the Union, in as much as they are not members of it and have no right to determine the policy of the Union in any matter. [778]

Mr. Van Dusen: Mr. Examiner, I insist that Mr. Wright can't have his cake and eat it too.

Trial Examiner Myers: Now I agree with you.

Mr. Wright: I was just noting my exception.

Trial Examiner Myers: I said I would agree with you because I erred yesterday and allowed the Board to ask that question yesterday and it is no more than fair that I permit you to ask it now.

Mr. Martin: Mr. Examiner, may we believe that you will err only once more in the case by allowing only one more question by Mr. Dusen?

Trial Examiner Myers: Well, I don't want to say I will err, but as long as I ruled that way yesterday, it is only fair to let him put the question now.

(Testimony of Clarence Buckless.)

Mr. Van Dusen: That is all I want is fair treatment.

Trial Examiner Myers: Will you read the question to the witness?

I am sorry that that crept into the record. I tried to keep that as the dividing line.

Mr. Van Dusen: Will you read the question, please, Mr. Reporter?

(The last question was read.)

Mr. Wright: If this man knows.

Trial Examiner Myers: Do you understand the question?

A. Yes. Well, just a minute. I will answer it in a minute. [779]

Trial Examiner Myers: You were hesitating. That is why I asked you whether you understood the question. A. Yes, I understand it.

It is the policy of the union in one way that that is our rights to organize and become a union aboard those ships. Therefore I think I had the right——

Q. (By Mr. Van Dusen) (Interrupting) To say that he had no right to be on the ship?

A. Without a union book.

Q. And that is the policy of the union, you think? A. I wouldn't say altogether, no.

Q. What is that?

A. I wouldn't say altogether it was the policy of the union to say that a man—it is their policy to make the men union or ask them; not force them, but to ask them and show them where they could

(Testimony of Clarence Buckless.)

have better conditions.

Q. That is not what you did. You didn't try to persuade him to join the union, did you?

A. Yes, I told him to go ashore and get a union book.

Q. Did you say that yesterday?

A. No. I haven't got all that in there, no. There is a whole lot more that I could have put in my testimony.

Q. But that was your first statement to him, wasn't it? A. Yes.

Q. Don't you believe that a non-union man has a right to work as well as a union man? [780]

A. Certainly.

Mr. Wright: I object to that. That is certainly irrelevant and immaterial as to what he believes about a union and a non-union man working.

Trial Examiner Myers: I will overrule the objection, but it is getting quite argumentative.

Mr. Van Dusen: Well, may I explain? The heart of this case is union activities. Now if they are engaged in legitimate union activities, that is one thing. If on the other hand trouble is being stirred up, that is something else. This is one thing I will have to insist on and I am going to insist on putting my questions in the record. If you want to overrule me, all right, but I have to do this.

Trial Examiner Myers: I am not stopping you from asking any question or any line of questioning, but in the first place I overruled the objection and

(Testimony of Clarence Buckless.)

in the second place I just cautioned you not to get into any argument with the witness, because I can see it is just being argumentative now.

Mr. Van Dusen: Well, you can see I am having trouble getting answers.

Trial Examiner Myers: Proceed, will you, please?

Mr. Van Dusen: Will you read the question, please?

(The last question and answer were read.)

A. (By Mr. Van Dusen) Now at about the time you made that statement the mate came into the passageway, didn't he? [781] A. Yes, sir.

Q. And you spoke to him. What did you say to the mate? A. The mate spoke to me.

Q. Well, what did he say to you?

A. He told me as soon as I ate to get the men out on deck.

Q. What is that?

A. He told me to get the men out on deck.

Q. I mean what did he say at the time you were speaking to Mr. Dalton?

A. He told Mr. Dalton to go back and change his clothes and come out on deck.

Q. Didn't you say yesterday that the mate stepped in and said: "What is the matter?"

A. Perhaps.

Q. Do you deny that you said that? A. No.

Q. And didn't you say in reply, "This man has not got a union book, so I suggested that he go ashore with his suitcase"? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. So that you thought he ought to get right off the boat, didn't you? A. And get a union book.

Q. Yes, but you didn't try to persuade him to join the union, did you?

A. Well, there wasn't much time right then to do that. [782]

Q. Well, couldn't you have talked it over with him during the course of the trip? A. Yes.

Q. Don't you think that was the thing to do?

Mr. Wright: Mr. Examiner, I would like to inquire what is material about what this witness thinks with reference to whether it is the thing to do or the thing not to do?

Mr. Van Dusen: Well, he said he thought it was a good thing to have a union book.

Mr. Wright: The union thinks it is a good thing for union men to work.

Trial Examiner Myers: If you have any remarks to make will you please ask me for time out and I will take it off the record. Now will you proceed with your examination?

Mr. Van Dusen: Are you making an objection, Mr. Wright?

Trial Examiner Myers: There is no objection on the record.

Mr. Van Dusen: May I have that question read, please?

(The last question was read.)

Mr. Wright: Well now I object, Mr. Examiner, to the question for the reason that I feel it is irrele-

(Testimony of Clarence Buckless.)

vant and immaterial what this man thought about it. As a matter of fact we are willing to stipulate that the union always wants union men on the ships, especially if there are a lot of union men on the beach. [783]

Mr. Van Dusen: Can you stipulate that it is the union policy to do exactly what Mr. Buckless says they did in this particular case?

Mr. Wright: As I understand what he says. As far as I understand the matter—I can't speak for the Board—I am willing to stipulate that the union always wants union men on the ships in preference to non-union men, that there were a lot of union men on the beach, and that this man was not a union man. I am willing to stipulate that it is always the policy of the union to want only union men to work on the ships. .

Mr. Van Dusen: May I proceed.

Trial Examiner Myers: I asked both of you gentlemen to please proceed with the examination without having any argument.

Mr. Van Dusen: May I have the last question?
(The last question was read.)

Mr. Wright: Do I understand that my objection is overruled?

Trial Examiner Myers: Yes, it is overruled.

A. It might have been the thing to do and then again if they brought all non-union men aboard that ship where would we be? The company had

(Testimony of Clarence Buckless.)

a vote with eighty some per cent that they should carry then union men. That was what they were supposed to do, I believe.

Q. (By Mr. Van Dusen) How about the other 20 per cent? You [784] think they should be fired?

A. No, I don't

Q. Now after you said to the mate that you suggested that this man go ashore with his suitcase didn't the mate say this to you, "Now you go on back to the forecastle and change your clothes and come out here on deck"? Is that what he said?

A. Yes, sir.

Trial Examiner Myers: He said that to the new seaman.

A. The new ordinary, yes, sir.

Q. (By Mr. Van Dusen) So the mate didn't send him ashore, did he? A. No, sir.

Q. Now after the mate made that statement were you satisfied that he belonged on the ship?

A. Certainly. He belonged on the ship all the time from the time he was hired, I guess.

Q. But you didn't want him?

A. As a union man, no.

Q. Now did you treat every new man in the same way while you were on the "Nevada" and the "Washington"?

A. They weren't all the same men.

Q. I mean every time a new man came on board did you do the same thing?

(Testimony of Clarence Buckless.)

A. It all depended on the type of man that came aboard. [785]

Q. Was this the first time you had seen this man? A. That is the first time.

Q. And you didn't know much about him, did you? A. No.

Q. Now I repeat my previous question: Do you treat every man that comes on a boat for the first time for a job the same way?

Mr. Wright: Mr. Examiner, I want to object—

Trial Examiner Myers: Will both you and the witness wait until the question has been propounded?

Mr. Wright: I thought he had finished.

Trial Examiner Myers: Have you finished your question, Mr. Van Dusen?

Mr. Van Dusen: Will you read the question?

(The last question was read.)

Trial Examiner Myers: Now what is your objection?

Mr. Wright: The objection is that the question is irrelevant and immaterial.

Trial Examiner Myers: Overruled. Now what is the answer?

A. The answer is the man did not know—

Q. By Mr. Van Dusen: No. No. Just answer that question. I don't want anything else.

Trial Examiner Myers: Will you please let the witness answer the question?

(Testimony of Clarence Buckless.)

Mr. Van Dusen: But he is not answering the question. [786]

Trial Examiner Myers: If it is not responsive you can move to strike it out.

Now will you read the question again and will you please listen to the question carefully, Mr. Witness, and answer it.

The Witness: Yes, sir.

(The last question was read.)

A. I did on that boat.

Q. (By Mr. Van Dusen) You did on that boat? That is, the "Nevada"? A. Yes.

Q. How about the "Washington"?

A. I wasn't delegate on that, sir.

Q. Well, you didn't do it on the "Washington"?

A. I wasn't boatswain on the "Washington."

Q. Well, I mean you didn't do this sort of thing on the "Washington"?

A. I had no right to do it.

Trial Examiner Myers: Did you do it or not and let's quit arguing. A. I said, no, sir.

Q. (By Mr. Van Dusen) Do you know of your own knowledge whether Mr. Rosen handled new seamen in the same manner on either the "Nevada" or the "Washington"? A. I do not. [787]

Q. Now you were this man's boss, were you not?

A. Yes, sir.

Mr. Wright: When you get through with this line of questioning I want to reserve a motion to

(Testimony of Clarence Buckless.)

strike as soon as you finish this line of questioning.

Are you finished?

Mr. Van Dusen: Yes. I am starting something else.

Mr. Wright: Now, Mr. Examiner, in order to properly preserve my objections to the testimony, I move that all the questions and answers made from the time the objection was made be stricken.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Van Dusen) Now, Mr. Buckless, you were his boss, were you not?

A. Yes, sir.

Q. And you started to put him to work and you found that he knew very little? Correct?

A. That is right.

Q. Now were you ever an ordinary seaman?

A. Yes, sir. [788]

Q. How do you become an ordinary seaman?

A. Well, in the days when I was an ordinary, I joined the ship——

Q. (Interrupting) Let's speak about this time.

A. About this time?

Q. Yes.

A. Well, I haven't been an ordinary. I couldn't answer that question.

Q. Well, you had ordinaries under you, didn't you? A. Yes.

Q. And you don't know how they become ordinaries?

(Testimony of Clarence Buckless.)

A. There is different ways. I have heard they are supposed to go as cadets or similar to that effect for six months.

Q. Where? A. On board ship.

Q. Ships like that one you were on?

A. I couldn't answer that question whether it was ships like that, cargo ships, passenger ships, or what it may be.

Q. All right. Any other way that they become an ordinary seaman?

A. That is the only way I have heard.

Q. Do they require a license? Do they have to have a license?

A. After that time as I understand it they are supposed to get a Copeland book or book of identification. [789]

Q. That is all they have to have, is that correct?

A. Or a certificate of identification.

Q. That is all they have to have? A. Yes.

Q. And he had that, didn't he? A. Yes.

Q. Didn't he? A. Yes.

Q. So that he had all that was required at that time?

A. He said he was never aboard a ship before.

Q. But I mean he had all that was required?

A. Yes, he had it.

Q. Now, isn't it a fact, Mr. Buckless, that an ordinary seaman is really a novice, a beginner, isn't that a fact? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. And one of your duties was to teach him, so that he could become an A. B., isn't that correct? Isn't that so?

A. That is really up to the man to teach himself. I was aboard there to do other work; not to teach him.

Q. Well, now, you were over a group of ordinary seamen, weren't you and A. B.'s?

A. Yes, sir.

Q. You issued orders to them, did you not?

A. I did.

Q. And A. B.'s had to have experience, did they not? Does [790] an A. B. have to have a license?

A. An able-bodied seaman's ticket.

Q. How long does it take them to get a license?

A. Three years, I believe.

Q. Now, what an ordinary seaman tries to do is to earn an A. B.'s license, isn't that right?

A. Yes.

Q. And until that time he is learning and he is an apprentice, isn't he? A. Yes, sir.

Q. Now, one of your duties and one of the duties of the other A. B.'s was to assist him for a while until he got on to the job, isn't that so?

A. Yes, sir.

Q. So that when the mate told you not to be too hard on this fellow he was right, wasn't he?

A. Which I was.

Q. Now, didn't you testify that you were pretty disgusted with this fellow?

(Testimony of Clarence Buckless.)

A. I certainly was.

Q. Yet he was a novice, wasn't he?

A. A new beginner.

Q. Now, isn't a fact, Mr. Buckless, that the reason why you were hard on him was because he was not a union member?

A. No, sir. [791]

Q. You say "No, sir"?

A. No, sir.

Mr. Wright: Now, Mr. Examiner, I want to object to the question for the reason that it is irrelevant and immaterial to anything involved in this case.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) What is the answer?

A. No, sir.

Q. Did he later join the N. M. U.?

A. No, sir.

Q. Do you know whether he is still on the ship?

A. No, sir, he left the ship in New Haven, Connecticut.

Q. How long after he started did he leave?

A. Well, he rode the ship from Port Arthur to New Haven and got off.

Trial Examiner Myers: You mean he jumped the ship?

A. Well, he left the ship; left his clothes and everything.

Trial Examiner Myers: Is that what they call jumping a ship?

A. Yes. The man really, was everybody thought, he really wasn't all there.

(Testimony of Clarence Buckless.)

Mr. Van Dusen: I move to strike out that last sentence as not responsive to my question.

Mr. Wright: Mr. Examiner, Mr. Van Dusen asked for that.

Mr. Van Dusen: No, I didn't ask for that. Read my question [792] please?

(The testimony referred to was read.)

Mr. Van Dusen: I submit that last sentence is not responsive.

Trial Examiner Myers: All right. Take out everything after the word "Yes." Otherwise, denied.

Q. (By Mr. Van Dusen) Did Mr. Dalton attend any of the meetings of the crew?

A. Why, yes, he did.

Trial Examiner Myers: You mean union meetings? A. Union meetings.

Q. (By Mr. Van Dusen) Did he attend your meetings? A. Yes, sir.

Q. Did you ask him to?

A. Not personally. There was — we always posted a sign whenever we had a meeting; at a certain date and hour and so on; and the men all came to that.

Q. And he attended some of those meetings?

A. Yes, sir, one meeting.

Q. Did you tell him he had to attend the meetings? A. No, sir.

Q. Now, I believe you testified, Mr. Buckless, that you and Chief Tranberg were pretty friendly on the "Nevada" that first trip?

(Testimony of Clarence Buckless.)

A. Yes, sir, all the time, yes, sir. [793]

Q. Throughout the entire trip you considered him a friend of yours? A. Yes, sir.

Q. Was he a good mate in your opinion?

A. Yes, I think he is a very good mate.

Q. Did you always respect his judgment on matters pertaining to the operation of the ship?

A. Yes, sir.

Q. He was your superior, wasn't he?

A. He was.

Q. He issued orders to you? A. Yes, sir.

Q. And also to Mr. Rosen?

A. Well, now, he could I believe, but as a general rule they consult with the boatswain and tell—

Q. (Interrupting) You mean he issued them through you? A. Through me, yes.

Q. You were the boss of that group and Mr. Rosen was an A. B., is that right?

A. That is right, yes.

Q. He was around the ship, watching the work going on on the ship? A. The mate?

Q. Yes. A. Sometimes. [794]

Q. His duty was to know what was going on, wasn't it?

A. Well, the man had the four to eight watch and naturally he had to get some sleep.

Q. Well I mean on his watch of course.

A. Well, on his watch he was on the bridge and wasn't down on the deck at all. He wasn't down on the deck at all then.

(Testimony of Clarence Buckless.)

Q. When was he down on deck?

A. Sometimes between the hours of eight and twelve in the forenoon.

Q. Any other time?

A. In the afternoon he generally slept.

Q. Now you testified yesterday that you thought Mr. Rosen was a good A. B.; a competent A. B.

A. Yes, sir.

Q. That you never saw him loaf.

A. Never did.

Q. Or neglect his duties. Now, you didn't see him all the time he was on duty during that trip, did you?

A. Mr. Rosen?

Q. Yes.

A. Well, I worked with him most of the time.

Q. Was he always on your same watch?

A. I worked all day.

Q. What hours? [795]

A. From eight in the morning until twelve and from one until five.

Q. And when did he work?

A. He worked from eight in the morning until twelve and from eight at night to twelve midnight. Therefore I was with him those four hours.

Q. The four hours in the afternoon you were not with him?

A. No, he was off the four hours in the afternoon.

Q. I mean in the night time you were not with him.

(Testimony of Clarence Buckless.)

A. I worked with him in the day time on the eight to twelve.

Q. You were not with him at night?

A. No, sir.

Q. So you don't know whether he neglected his duties at night.

A. No.

Q. Personally. I am talking about your own personal knowledge.

A. No.

Q. You don't know whether he loafed at night of your own personal knowledge?

A. No, sir.

Q. Now, of your own personal knowledge?

A. No, sir. I would like to explain that if you will let me. [796]

Q. No. I just want to know what you yourself know.

Mr. Wright: Mr. Examiner, if this witness has something in connection with that question to say he should be allowed to say it.

Trial Examiner Myers: I suggest you make a note of it and bring it out on redirect examination.

Q. (By Mr. Van Dusen) Now if Mate Tranberg told you that he thought Rosen neglected his duties and was not a good A. B., would you agree with him?

A. No, sir.

Q. And to that extent you would not respect his judgment?

A. Not in that case.

Q. Although you did say before that you respected his judgment? I asked you a little while

(Testimony of Clarence Buckless.)

ago whether you respected the chief mate's judgment and you said "Yes" did you not?

A. Yes, but not in that case I wouldn't.

Q. In this case you would not? A. No.

Q. That is not because Mr. Rosen is closely associated with you in these Union matters, is it?

A. No, sir.

Q. Now you said something about beer coming aboard the ship at Cat Island and I think you testified you didn't order the beer, is that correct?

A. Beer coming from shore in Cat Island? [797]

Q. Yes.

A. I am afraid you have a mistake there.

Trial Examiner Myers: He was bringing the beer aboard at Port Arthur.

Q. (By Mr. Van Dusen) Port Arthur. I am sorry. Port Arthur, is that it?

A. Yes, sir.

Q. That was not for you? A. No, sir.

Q. You say Mr. Hart had it sent aboard?

A. Yes, sir.

Trial Examiner Myers: But this gentleman was carrying the beer on board.

Q. (By Mr. Van Dusen) You carried it aboard for him?

A. I didn't carry it aboard. I was carrying it aboard. I didn't carry it aboard.

Q. Do you know whether he ever got the beer?

A. I do not.

(Testimony of Clarence Buckless.)

Q. Did you ever ask him whether he got it?

A. I never did.

Q. Well, you brought it aboard for him, didn't you?

A. I didn't.

Q. Who did?

A. I don't know. I don't know as he ever got it.

Q. You were not even interested? [798]

A. Not after the captain told me I couldn't take it aboard.

Q. Weren't you a little bit curious as to whether he got it?

A. No. It was not my beer. I was doing him a favor as I thought as he asked me if I would carry it aboard the ship. I met the mate and set it down on the dock. Then I met Mr. Hart and informed him where his beer was and I was finished with it.

Q. What did the captain or the mate say?

A. What did the mate say?

Q. Well, the captain.

A. The captain told me I couldn't take it aboard; If I did, I would be fired.

Q. Weren't you interested in learning whether Mr. Hart really got that beer?

A. No, sir.

Q. You never drank any of it, did you?

A. No, sir.

Q. Now, Mr. Buckless, who did you say were active in Union work aboard the "Nevada"?

A. Lee Holmes.

(Testimony of Clarence Buckless.)

Q. Yes. A. Gordon Rosen.

Q. Yes. A. Sidney Cole. [799]

Q. What is that? Sidney what?

A. Sidney Cole.

Q. C-o-l-e. A. I believe that is it.

Q. Anybody else?

A. C. Buckless, myself, and Radio Operator Jensen.

Q. Jensen? They were the most active ones, were they? A. Lee Arnold.

Q. Oh, Lee Arnold.

A. Yes, they were the most active ones.

Q. Those men were all as active as you, weren't they?

A. No. The most active man was Gordon Rosen and myself and Lee Arnold—I mean Lee Holmes.

Q. Were any of those men ever delegated to go to see the captain or the chief mate regarding grievances?

A. Gordon Rosen, myself and Lee Holmes.

Q. How about Lee Arnold?

A. And Lee Arnold.

Q. Did Sidney Cole ever go up to see him about anything?

A. No, I don't believe he ever did. We never asked him or voted him to.

Q. How about the radio operator?

A. No, he never did either. I think he did at one time. He asked about the food on the ship, if I am not mistaken.

(Testimony of Clarence Buckless.)

Q. What is that? [800]

A. If I am not mistaken I think he went to see about the food at one time.

Q. Now, did these men leave the "Nevada" at the same time you did? A. No, sir. [801]

Q. When did Mr. Holmes leave?

A. Mr. Holmes fell down in the pump room just a trip before and hurt his hip and was taken ashore in an ambulance.

Q. Now, how about——

A. (Interrupting) Lee Arnold missed the ship.

Q. Where did he miss the ship?

A. In Port Arthur. Gordon and I were fired the following trip.

Q. Did Lee Arnold ever get back on the ship?

A. No, he never did.

Q. How about Radio Operator Jensen?

A. He is still steward.

Q. He is steward now?

A. No, he was steward then. If I said "radio operator" I made a mistake there.

Q. Yes. That is what you said.

A. I am sorry.

Q. He was steward? A. Yes, sir.

Q. Steward Jensen? A. Yes, sir.

Q. When did he leave or is he still aboard the ship? A. No, he is still aboard.

Q. He was still aboard when you were fired?

A. Yes, sir. [802]

(Testimony of Clarence Buckless.)

Q. Is he still on? A. I believe he is.

Q. On the same ship? A. Yes, sir.

Q. How about Sidney Cole?

A. I believe he is still there.

Q. Is he still on board? A. Yes, sir.

Q. Now, while you were on the "Nevada" did the captain or the chief mate ever fire anybody other than, as you say, yourself and Rosen?

A. Yes, there has been men fired, I believe.

Q. Men fired all the time; I mean on and off men are fired, aren't they? A. Yes.

Q. For what reasons?

A. Well, I couldn't explain the reasons.

Q. Incompetency?

A. Well, whatever they have a right to fire him for. I just couldn't answer that.

Q. Well, you think a man should be fired for being incompetent, shouldn't he?

A. Well, if he don't know his work.

Q. Yes, that is what I mean. A. Yes, sure.

[803]

Q. He should be fired for being habitually drunk?

A. Yes, if he was a habitual drunkard.

Q. You think he should be fired?

A. If he was a habitual drunkard and couldn't do his work.

Q. Do you know whether the captain or the mate ever fires anybody for either one of those two reasons? A. Not that I know of.

(Testimony of Clarence Buckless.)

Q. Now, on the SS "Washington", who were the active union members in addition to yourself and Mr. Zinkiewicz?

A. Gordon Rosen and there was another man, I believe. I can't think of his name.

Q. Well, that ship was practically one hundred per cent unionized, wasn't it? A. Yes, sir.

Q. And weren't there more active men there than on the "Nevada"?

A. I wouldn't say. I think they were about evenly matched ships.

Q. Well, can you name some of them in addition to the three; that is, you, Rosen, and Zinkiewicz?

A. Well, I was only on there two trips.

Q. Well, you had meetings?

A. Yes, but I didn't know the men.

Q. Did you have meetings? A. Yes, sir.

[804]

Trial Examiner Myers: What was your duty on the "Washington?"

A. I was quartermaster on the "Washington".

Q. (By Mr. Van Dusen) About how many attended those meetings on an average?

A. Sixteen to eighteen.

Q. Sixteen to eighteen? A. Yes, sir.

Q. Were you three the delegates or did you have any other delegates elected on that ship?

A. Well, there was the steward department, the engineer's department and the deck department.

Q. Well, can you name the delegates?

(Testimony of Clarence Buckless.)

A. No. That is pretty hard to do. I didn't know the men's names. I know that Zinkiewycz was deck delegate and Gordon Rosen was ship's delegate.

Q. And what were you? Were you a delegate on that ship? A. No.

Q. You were not? A. No.

Q. Who usually presented the grievances to the captain or the chief mate? A. The delegates.

Q. Zinkiewycz and Rosen? A. Yes, sir.

[805]

Q. Did anybody else ever present grievances to your knowledge, to the captain?

A. Not that I know of.

Q. Did anybody else ever go up with you or with Rosen?

A. Yes. At one time there were three quartermasters, including myself.

Q. Who were the quartermasters? Do you know their names?

A. No, I don't. I can't think of the names.

Q. Suppose you look at the articles. Maybe they will help you. A. Archie C. West.

Q. Archie West. Did he ever go up to the captain with a grievance?

A. He went along with us.

Q. I see. A. And Ernest Zehreel.

Q. Did he ever present grievances?

A. He went up too. And Buckless was the other quartermaster.

(Testimony of Clarence Buckless.)

Q. But he went up to the captain at that time with a grievance along with you?

A. Who is that?

Q. This fellow Zehreel.

A. At one time he did.

Q. Anybody else that you recall from that list who from [806] time to time may have discussed with the captain some grievance?

A. Zinkiewicz and Rosen.

Q. Did Mr. Zehreel or whatever his name is, leave the ship at the same time you did?

A. No, he stayed on.

Q. Is he still on?

A. No, I don't believe he is.

Q. Well, he didn't leave at the time you did?

A. No, sir.

Q. He stayed on perhaps for another trip?

A. Yes, sir.

Q. Do you know whether he left voluntarily or not?

A. No, I don't.

Q. You don't know? A. No.

Q. Did Mr. West leave at the same time you did?

A. I believe Mr. West is still aboard.

Q. Now, the captain knew, did he not, that you, Zinkiewicz, and Rosen were union men?

A. Yes, sir.

Q. You say he knew it? A. Yes, sir.

Q. He at least knew you were speaking for a group of the crew regarding complaints, didn't he?

[807]

(Testimony of Clarence Buckless.)

A. Yes, sir.

Q. He knew that West was speaking for the crew?

A. West wasn't speaking. He was standing by as a witness.

Q. Well, he was with your delegation, wasn't he?

A. Yes, he was with our delegation.

Q. He had the same complaint and the same applies to Zehreel? A. Yes, sir.

Q. And if the captain knew that you were a union man he knew that West and Zehreel were union men? A. I believe so.

Q. Now, Captain Bergman didn't fire West and Zehreel for union activities, did he? In fact, he didn't fire them at all, did he?

A. Not that I know of.

Q. Well, I mean when you say he fired you, he didn't fire those two men, did he? A. No.

Q. And as far as you know, West is still on the boat, isn't he? A. Yes, sir.

Q. And Zehreel, you are not sure whether he quit or not? A. No, sir. [808]

Q. Now on the SS "Nevada" you said that the captain from time to time discharged the men, did you not, Captain Swanson, he discharged men from time to time; you said that, didn't you?

A. The captain or the mate.

Q. The captain or the mate? A. Yes, sir.

Q. To your knowledge, did he ever discharge any non-union men? A. Not that I know of.

(Testimony of Clarence Buckless.)

Q. You wouldn't say he did not?

A. No, I wouldn't say that he did not or that he did.

Q. How about Captain Bergman, to your knowledge, did he ever discharge any non-union men?

A. Not that I know of.

Q. You wouldn't say he did not? A. No, sir.

Q. I believe this morning you testified that you were not sure that these were the working rules that were posted on the ships, the SS "Nevada" and the SS "Washington", but that you did recognize some of the provisions, is that correct?

A. Yes, sir.

Q. Do you recognize this provision?

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Q. (By Mr. Van Dusen) Do you recognize this particular rule: [809] "No employee will lose his job or be forced off a ship because of his membership or non-membership in any organization."

A. That was one of the rules that I first looked at that I don't remember seeing on this other ship.

Q. You don't remember seeing that?

A. No. It might have been there. I overlooked it if it was.

Q. You wouldn't say it was not, would you?

A. No.

Q. Now didn't you read the rules carefully?

(Testimony of Clarence Buckless.)

A. Not altogether. I glanced through them, things that I wanted to know from time to time.

Q. But you, as a union man, as a delegate on the "Nevada", were interested in this very thing, weren't you?

A. Yes, but I cannot carry those things in my head.

Q. You would read them through, wouldn't you?

A. Yes.

Q. Is there anything in these rules saying that nobody will lose his job or be forced off the ship because of membership or non-membership; is there anything in the rules to that effect, not the exact words?

A. There might have been.

Q. Well, don't you know? A. No.

Q. You were not particularly interested in that type of [810] rule, were you?

A. I might have been.

Mr. Wright: Mr. Examiner, I object to that.

Trial Examiner Myers: Will you please object before the witness answers. I cautioned you and cautioned the witness not to answer if there is an objection.

Mr. Wright: May I have a motion to strike?

Trial Examiner Myers: Leave it in. The motion is denied.

Q. (By Mr. Van Dusen) You wanted the crew to be 100 per cent union, didn't you?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. It couldn't be under such a rule, could it?

Mr. Wright: Mr. Examiner, I object to that for the reason it calls for a conclusion of the witness, and furthermore it is argumentative.

Trial Examiner Myers: I will sustain the objection on the ground it is argumentative.

Mr. Van Dusen: May I rephrase it?

Trial Examiner Myers: Certainly.

Q. (By Mr. Van Dusen) Do you think, Mr. Buckless, that under such a rule the ship could be 100 per cent union?

Trial Examiner Myers: Well, that is not argumentative, but it leaves something to my imagination.

Q. (By Mr. Van Dusen) I would like to ask the question. A. Yes. [811]

Q. You think it could? A. Yes.

Q. Now, Mr. Buckless, isn't it a fact that on a number of occasions, at a number of ports, you came on the ship in an intoxicated condition?

A. Never.

Mr. Martin: Which ship, please?

Trial Examiner Myers: Were you listening to the question?

Mr. Martin: Which ship?

Trial Examiner Myers: He said a number of ships and a number of ports.

Mr. Martin: I am sorry.

Q. (By Mr. Van Dusen) Now on the SS "Nevada" on this trip to Spain, it stopped at Bilbao?

(Testimony of Clarence Buckless.)

A. Yes, sir.

Q. How many days were you at that port?

A. Three, I believe, three or four; three days, I believe.

Q. Now while in that port, didn't you come aboard the ship in an intoxicated condition?

A. No, sir.

Q. Isn't it a fact that you were in such condition that the mate told you that you could not attend to your duties? A. No, sir.

Q. Isn't it a fact that you were late for your watch when [812] you came aboard at Bilbao?

A. I was not late.

Q. You were not late?

A. I couldn't get aboard the ship though. The ship had broken away from the dock.

Q. You say you were not late?

A. I was on the dock by the side of the ship. I couldn't get aboard.

Q. On that same ship at New Haven, Connecticut, did you not come aboard in an intoxicated condition? A. No, sir.

Q. At the port Boston while on that ship, while that ship was in port, did you not come aboard in an intoxicated condition? A. No, sir.

Q. Is it not a fact that on a number of occasions you were drunk while on board ship?

A. No, sir.

Q. Isn't it a fact that both Mate Tranberg and Captain Swanson warned you on a number of oc-

(Testimony of Clarence Buckless.)

casions that you would have to quit habitual drinking? A. No, sir.

Q. Isn't it a fact that Mate Tranberg and Captain Swanson both told you that they would not sign you on new articles because you were habitually drinking? [813]

A. No, sir.

Q. On the SS "Washington" isn't it a fact that you came aboard at Claymont, Delaware, in an intoxicated condition?

A. I had one chocolate milk at Claymont. That is every drop of liquor I drank.

Trial Examiner Myers: Liquor or liquid?

A. Liquid.

Q. (By Mr. Van Dusen) And your answer is "no"? A. No.

Q. You were at Claymont, Delaware, on July 4?

A. Yes, sir.

Q. Which was a holiday? A. Yes, sir.

Q. Where did you go?

A. July 4 I stayed aboard the ship until the night of the 4th.

Q. Until what?

A. Until the night of the 4th. I went to the fire works that evening.

Q. Where? A. There at Claymont.

Q. What else did you do?

A. Came back aboard the ship?

Q. How long were you there?

A. About three hours. [814]

(Testimony of Clarence Buckless.)

Q. That is when you had the drink you referred to?
A. Yes, sir.

Trial Examiner Myers: Didn't you tell us this morning you went to Philadelphia?

A. That was on the "Paulsboro".

Q. Wasn't it the 4th of July?

A. On the "Paulsboro".

Q. (By Mr. Van Dusen) Was that when you had the drink you referred to a little while ago?

A. No. I had the chocolate milk on Sunday, the day before the 4th.

Q. On July 3rd? A. Yes, sir.

Q. Were you in Claymont, Delaware, that day?

A. Yes, sir, the day we arrived.

Q. You didn't go ashore that day?

A. I went ashore, yes.

Q. Did you go ashore on the 3rd, too?

A. Yes, sir.

Q. Isn't it a fact that on July 5th, the day following July 4th, you were in such condition, as the result of your drinking the day before, that you were unable to stand your watch?

A. The morning of the 5th I had hired a man to stand my watch. [815]

Q. Why?

A. For the reason I didn't think I would be back, but I was back.

Q. You went to see the fireworks?

A. Yes, sir.

Q. Did you intend to be out all night?

(Testimony of Clarence Buckless.)

A. I didn't know but what I might.

Q. You didn't know when you left the ship?

A. No. So I asked this man if he would stand it, and he said he would.

Q. Were you with anybody when you went ashore?

A. Yes.

Q. With whom?

A. With an oiler.

Q. Do you know his name?

A. No, I don't.

Mr. Van Dusen: Let me see the "Nevada" articles.

Q. (Showing the articles to the witness.) Do you recognize him?

A. This is the "Nevada" I believe I have here.

Q. Pardon me. It is the "Washington". I am sorry. I will show you the "Washington" articles.

A. I believe it is this one.

Q. F. Roderick?

A. That is not the fellow.

[816]

Q. That is not the fellow?

A. No, sir.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Q. (By Mr. Van Dusen) Mervic?

A. Yes, sir.

Q. Was he the one?

A. Yes, sir.

Q. Did he come back with you?

A. Yes, sir.

Trial Examiner Myers: What did he have to drink when you had the chocolate soda?

(Testimony of Clarence Buckless.)

A. We didn't drink nothing that night. This was Sunday I had the drink.

Q. Sunday, July—— A. July——

Trial Examiner Myers: This was July 4.

A. I went ashore both days.

Trial Examiner Myers: July 3rd he had a chocolate soda. On July 4th he didn't have any.

Q. (By Mr. Van Dusen) Did Mr. Mervie arrange to be relieved the following day?

A. I don't believe so.

Q. You don't think so? A. No, sir. [817]

Q. Did he intend to stay out all night?

A. No, he came back and stood his watch.

Q. He came back? A. Yes, sir.

Q. Now having come back to the ship, you say that you permitted this fellow to stand your watch, having made arrangement for it, is that right?

A. (No response.)

Q. Isn't it a fact that on July 5 you were found intoxicated and asleep on the deck?

A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Now isn't it a fact that on several occasions you were found in your bunk in an intoxicated condition when you should have been on watch?

A. No, sir, never, on either one of those ships.

Q. Isn't it a fact that after leaving several ports you were in such a bad condition from drinking that you had to go to the ship's hospital?

A. No, sir.

(Testimony of Clarence Buckless.)

Q. Now isn't it a fact that both Captain Bergman and chief mate Johanson told you that they would not sign you up on new articles on the SS "Washington" because you had been habitually drinking, and were therefore unable to properly attend to [818] your duties? A. No, sir.

Q. You deny that? A. I deny that.

Q. Who was present at the time you were paid off and got your certificate of discharge from the SS "Nevada" on or about April 18, I believe it is, 1938? A. The captain and the third mate.

Q. Do you know his name?

A. Roger Kelly, I believe.

Q. Roger Kelly? A. Yes, sir.

Q. Who was present at the time you were paid off and got your certificate of discharge from Captain Bergman on the SS "Washington" on or about, I believe it is, July 14, 1938?

A. The chief mate gave me my discharge.

Q. The captain was there, wasn't he?

A. No, sir.

Q. Who was there?

A. I was paid off, and at 4:00 o'clock or 3:30 that evening chief mate Johanson called me to his room and paid me for that day's pay and gave me my discharge.

Q. Well, the captain signed the discharge?

A. Yes, sir.

Q. Didn't he sign it in your presence? [819]

A. No, sir.

(Testimony of Clarence Buckless.)

Q. Did the chief mate Johanson have it there at the time? A. He did.

Q. You mean it was already signed?

A. It was already for me.

Q. You signed it in the chief mate's presence?

A. Yes, sir.

Q. Was anybody present at that time?

A. No, sir.

Q. Just you two? A. Just we two.

Q. I believe you testified regarding Mr. Rosen, that on occasions you looked to see whether he was working, is that correct?

A. Looked to see how he was getting along.

Q. I mean on occasions when he didn't know you were watching?

A. To see how he was getting along with his work.

Q. I mean there were occasions when he didn't know you were watching?

A. Yes, there was one I mentioned, I believe.

Q. Did you do that because you thought he might not be working? A. No, sir.

Q. Were you here while Mr. Rosen testified?

A. Some of the time I was, and some of the time I was not. [820]

Q. Did you hear him testify that there were occasions when he had meetings of the crew, union meetings, when he should have been on duty?

Mr. Wright: Mr. Examiner, I submit that the testimony does not reflect that.

(Testimony of Clarence Buckless.)

Q. (By Mr. Van Dusen) On special occasions.

Mr. Wright: I submit that he has not made that statement.

Mr. Van Dusen: Do you want me to find it for you?

Trial Examiner Myers: The question is whether he heard this man so testify.

A. I never did.

Q. (By Mr. Van Dusen) You did not?

A. No, sir.

Q. You were out then?

A. I must have been, because I never heard it.

Q. Let me ask you if you ever attended any meetings, whether on special occasions or otherwise, when you should have been on duty?

A. Never.

Q. Not even for a short period of time?

A. Never.

Q. Were you at all the meetings Mr. Rosen attended? A. I believe so.

Q. I believe Mr. Rosen—you were not always on the same [821] shift that he was?

A. No. He was off in the afternoon.

Q. So far as you are concerned, you never attended any meetings during working hours?

A. Never did.

Trial Examiner Myers: Now just to clear up something in my own mind, the A. B. was on an 8:00 to 12:00 shift in the morning, and naturally would be on the 8:00 to 12:00 at night. Now is

(Testimony of Clarence Buckless.)

there always something for those fellows to be doing during the day while they are sailing along?

A. The time off you mean?

Q. No, the time on. A. Yes, sir.

Q. There is always something to do?

A. Yes, sir. At night they stand watches. In the day time they work on duty. [822]

Q. All right, we will take the men from 8:00 to 12:00. Is there always something to keep those fellows busy; do they always work, or stand around and smoke?

A. From 10:00 to 10:20 they have a recess, like coffee time, and they stop and smoke, and have coffee; and the same in the afternoon.

Q. What do they do?

A. Clean ship and paint.

Q. And they do that over again and again, clean and paint? A. Yes, sir.

Q. Just to keep them busy and keep them out of mischief?

A. There is a whole lot of work to do. They really have not got enough men on a ship.

Trial Examiner Myers: Next question.

Q. (By Mr. Van Dusen) This man, Linville, I believe you testified that he was fired at the end of the second trip on the "Nevada"?

A. The second trip that he was on.

Q. Why was he fired?

A. At Port Arthur, Texas.

(Testimony of Clarence Buckless.)

Q. Why? A. I really wouldn't know.

Q. You don't know? A. No, sir.

Q. Is he competent? Was he an A. B.? [823]

A. No, he was an ordinary.

Q. Is he competent, in your opinion?

A. Well, at some things. He was not an extra good man.

Q. He was a union man, wasn't he?

A. Yes, sir.

Q. Was he more competent than Dalton?

A. Yes, I will say he was much more.

Q. What was your rate of pay on the SS "Nevada"?

A. When I became boatswain it was \$100.00 a month, plus overtime, board and room.

Q. Plus overtime, board and room?

A. Yes, sir.

Q. Plus overtime? A. Yes, sir.

Q. And plus board and room?

A. Yes, sir. That was after the raise in pay.

Q. Let's get it straight now? A. Yes.

Q. On this particular trip, let's take a look at these shipping articles again. On this particular trip——

A. Yes, \$100.00 per month.

Q. Did that rate apply to the trip to Spain too?

A. No.

Q. When did that start?

A. The same company that was running coast-wise were getting that here, were already getting it while we were in Spain, [824] coming back.

(Testimony of Clarence Buckless.)

Q. Did you get it at the start of that Spanish trip?

A. No, we didn't get it at all until——

Q. What were you getting when you went to Spain? A. \$90.00, plus overtime.

Q. Plus room and board? A. Yes, sir.

Q. When your wages increased \$100.00?

A. During that trip to Spain.

Q. During the trip to Spain?

A. That is when they were increased, but I didn't get mine.

Q. From what date did you get yours?

A. I forget just whether it was April 1st or March. I really couldn't tell you.

Q. April or March possibly?

A. I think so, something like that.

Q. And up to that time you had been getting \$90.00?

A. Up to that time I had been getting \$90.00, yes, sir.

Q. Now, on your last trip on the "Washington" what was your rate? A. \$87.50.

Q. Were you boatswain on the boat?

A. Quartermaster.

Q. \$87.50, without overtime?

A. Including overtime, board and room. [825]

Q. Now, I believe you testified that you saw Mr. Rosen writing in the crew's quarters in his notebook, that is correct, isn't it? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. And during—this is the “Washington”?

A. Yes, sir.

Q. You didn’t see him writing in his notebook on the “Nevada”?

A. No, sir.

Q. And you discussed union matters and activities with him all during that trip did you not?

A. Yes, sir.

Q. Since you both left the “Washington” you have also discussed your complaints with each other?

A. Very little.

Q. Compared notes?

A. No, sir.

Q. Didn’t you tell him what you thought happened, as far as you were concerned?

A. Not since we have been ashore. After we filed our complaints I spoke to the man very little.

Q. On those few occasions you told him in general about your case?

A. We filed our complaints. We both together, and talked back and forth or to each other. [826]

Q. You told him what you were going to testify to?

A. I did not.

Q. Did he ask you what you were going to testify to regarding him?

A. No, sir.

Q. He didn’t ask you what you were going to testify to regarding him?

A. No, sir.

Q. Did you ask him what he would testify to regarding you?

A. No, sir.

Q. Not at all, not even in a general way?

A. Not a word was said.

(Testimony of Clarence Buckless.)

Q. Did you see him very often?

A. Perhaps twice a week.

Q. Over at the N. M. U. Hall?

A. Mostly.

Q. Do you see him outside of the hall?

A. No, I never have.

Q. How about Mr. Zinkiewicz, did you discuss with him this case? A. No, I never did.

Q. Did you see much of him?

A. No. He left town I believe for a while.

Q. Is he on a ship now?

A. I believe he is. [827]

Q. Do you know what ship?

A. No, sir.

Q. Did you compare notes with him?

A. No, sir.

Q. Now, Mr. Buckless, do you recall how you first got a job on the SS "Virginia"?

A. No, I don't just remember.

Q. Did you go down to The Texas Company's office?

A. I believe she was running at that time chartered by the Standard Oil.

Q. Oh, I see. Then The Texas Company didn't own that ship at that time?

A. Yes, sir, The Texas Company owns the ship.

Q. And they chartered it to the Standard Oil?

A. That trip, I believe.

Q. Was that the Standard of New York?

(Testimony of Clarence Buckless.)

A. Standard of New York. I am not sure about that.

Q. You think so?

A. She was there at dock. I remember where I got on her. I joined her at Providence, Rhode Island, at the Standard Oil docks.

Q. Let me ask you this, who paid your wages?

A. The Texas Company.

Q. The Texas Company paid your wages?

A. Yes, sir. [828]

Q. You got a Texas Company check?

A. No, they paid me in cash.

Q. Who paid you, the captain of the vessel?

A. The captain, yes, sir.

Q. Well, now if it was chartered to the Standard of New York would The Texas Company pay your wages?

A. If the Standard of New York chartered the ship to carry a load of kerosene, gasoline, or whatever it may have been The Texas Company would pay me. [829]

Q. They would pay you?

A. They just hired the ship to carry that cargo.

Q. Then to the best of your knowledge The Texas Company paid you?

A. Yes, sir, they did.

Q. And to the best of your knowledge, you think you were hired by The Texas Company?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. But you don't recall how you happened to be hired?

A. Well, I was there; that is, I found out they wanted a man some way. I was there——

Q. Through the Seamen's Institute?

A. No, off the dock.

Q. It was in existence then, wasn't it, the Seamen's Institute? A. Not in Providence.

Q. Oh, this was Providence. I thought it was Port Arthur. Now the SS "Shenandoah", where did you sign articles on that ship?

A. Baltimore, Maryland.

Q. How did you get the job on the ship?

A. Through the Standard Oil of New York.

Q. That is what you meant this morning when you said they were called by The Texas Company?

A. They have a man shipping for them at Baltimore. [830]

Q. In Baltimore? A. Yes, sir.

Q. And he sent you over to The Texas Company? A. He did.

Q. I see. Now after leaving the "Shenandoah" and going on these other ships for a while, you then signed articles on the SS "Washington" about the end of February, 1937, didn't you, approximately?

A. Yes, sir, approximately.

Q. How did you get on that ship?

A. I got that job here in Port Arthur.

Q. Through what source?

(Testimony of Clarence Buckless.)

A. Through the Institute.

Q. Through the Seamen's Institute?

A. Yes, sir.

Q. Did you register over there?

A. Yes, sir.

Q. Did you register on what they call the open list, or on the Texas list?

A. Texas list.

Q. Not on both lists? A. No, sir.

Q. Did you also register at N. M. U. Hall?

A. Not at that time, no, sir.

Q. You did not? [831] A. No, sir.

Q. Weren't you then a new member, in the early part of 1937? A. Yes, sir.

Q. But you did not register there at the N. M. U. Hall?

A. I was not a Union member at that time.

Q. You were not?

A. No, not at that time.

Q. Now, the SS "Ayrian", how did you get on that boat? A. Through the Institute.

Q. Were you a Union member at that time?

A. Yes, sir.

Q. Did you register at the Union Hall at that time? A. No, sir.

Q. Why not?

A. Well as a matter of fact I just wanted to go on the Texas boat at that time.

Q. There were not many men on the beach then, were there? A. No.

(Testimony of Clarence Buckless.)

Q. It was pretty easy to get on any ship you wanted, wasn't it? A. Yes, sir.

Q. Now after you left the "Ayrian" you then signed articles aboard the SS "Nevada", after you left the "Ayrian"? A. Yes, sir. [832]

Q. Why did you shift from the "Ayrian" to the "Nevada"? A. I was fired off the "Ayrian".

Q. Then did you register? A. Yes, sir.

Q. Did you register for a new employment?

A. Yes, sir.

Q. Over at the Seamen's Institute?

A. Yes, sir.

Q. Did you register at the N. M. U. then?

A. Yes, sir.

Q. They must have put you on top of the list, because you got a job within about three days?

A. Four days.

Q. Was the list very small?

A. I don't know. I was picked up on the street.

Q. One of The Texas men? A. Yes, sir.

Q. Then you didn't get it through the Institute?

A. No. I registered there, but I didn't get the job through the Institute. The "Nevada" was over at Galveston, laying at anchor, and they wanted a man right away, and they asked me to take it.

Q. Now, after you left the "Nevada", April 18, 1938, didn't you try to get any employment on other ships? A. Yes, sir. [833]

Q. What did you do?

(Testimony of Clarence Buckless.)

A. Well, I registered at the Institute.

Q. Register at the N. M. U. Hall?

A. No, sir.

Q. You did not? A. No, sir.

Q. Now at that time weren't there a good many men on the beach?

A. Yes. My intentions at that time were to go to Beaumont and register.

Q. Did you go to Beaumont?

A. No, I didn't go up.

Q. Why?

A. Well, I got credit here for board and room, and I didn't think I could get——

Q. Got what? A. Credit.

Q. For what?

A. Board and room. As long as I got that I figured I might as well stay here.

Q. I don't understand.

A. I was trusted for board and room.

Q. By people here in Port Arthur?

A. Yes, sir.

Q. But you didn't register at the N. M. U. Hall?

[834]

A. No, sir.

Q. Now how long was it before you got a job on any other Texas ship after registering at the Seamen's Institute and leaving the SS "Nevada" on April 18? A. About seven weeks.

Q. You were on the Texas list over there?

(Testimony of Clarence Buckless.)

A. Yes, sir.

Q. Not on the open list?

A. No, sir. I was not allowed on both of them.

Q. You have to be on either one or the other?

A. Yes, sir.

Q. That is one of the rules of the Institute?

A. Yes, sir.

Q. Now why didn't you register at the N. M. U. Hall?

Mr. Wright: Mr. Examiner, I would like to object to the immateriality and irrelevancy of that question.

Mr. Van Dusen: Mr. Examiner, there is a period of six weeks in there after his discharge from the SS "Nevada," and I assume this man is going to claim wages for that period of time. I am entitled to find out what effort he made.

Trial Examiner Myers: Do you contend it is obligatory upon a discharged employee to get a job?

A. Certainly I do.

Trial Examiner Myers: In order to mitigate damages, if any? [835]

Mr. Van Dusen: I do. Otherwise he could sit back for two years, and then file a complaint.

Trial Examiner Myers: I will allow you to go into it in a limited way. I ruled it out.

Mr. Van Dusen: You have allowed me to do it with Rosen and Blasingame.

(Testimony of Clarence Buckless.)

Trial Examiner Myers: I will allow it in a limited way.

Mr. Van Dusen: I am going to ask all these questions, and if I am overruled that is all right, but I want to preserve it for the record.

Trial Examiner Myers: I told you I would allow it in a limited way.

Mr. Van Dusen: I may not want it limited.

Trial Examiner Myers: Go ahead.

A. Could I say a word?

Q. (By Mr. Van Dusen) Oh, yes.

A. I registered in the N. M. U. Hall after I left the "Nevada," but not since I left the "Washington."

Q. All right. That is what I am asking.

A. And that is all right. Maybe I am mistaken. I did register in the N. M. U. Hall when I left the "Nevada." I registered in the Institute, and I went up to the Sabine Towing, and I couldn't get a job because I didn't have a Copeland book. And I went up to the Pure Oil, and they [836] wouldn't take me because I didn't have a Copeland book. I did everything I could to get a job. [837]

Q. Well, that is what I was trying to find out.

A. Yes.

Q. Now, you say you did register at the N. M. U.?

A. Yes, sir.

Q. Immediately after leaving The Texas ship, SS "Nevada"?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Did you immediately register with the Seamen's Church Institute? A. Yes, sir.

Q. Why didn't you register on the open list at the Seamen's Church Institute?

A. Because they were not shipping any men off of it; too many men on the beach.

Q. Do you know what companies get their men from the open list?

A. Very few, that I can understand. I don't know the whole thing of it. I have heard different things. I don't know what companies.

Q. You said you were discharged from the "Nevada" for union activities, did you not?

A. Yes, sir.

Q. You didn't have much hope of getting a job on The Texas Company if you were discharged for union activities, did you?

A. I don't see why not. [838]

Q. And you thought they would hire you on?

A. That would be a discrimination right there if they didn't.

Q. Then you thought The Texas Company was perfectly willing to hire you, is that it?

A. Yes.

Q. Now, are there any companies who don't get their seamen from the N. M. U. Hall?

A. Yes.

Q. Or at sometime. I will limit it to that time.

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Can you name some of those companies?

A. Right here in Port Arthur, there is Sabine Towing, Pure Oil, Texas. Those are about all I can think of right offhand. Cities Service.

Q. How about Atlantic? A. Atlantic.

Q. Sun? A. And Sun.

Q. Did you call up the Sabine Towing?

A. Yes, sir. I went over there personally.

Q. Did you seek employment from the Pure Oil? A. Yes, sir.

Q. Did you seek employment from the Cities Service? A. No, sir.

Q. From the Sun? [839] A. No, sir.

Q. From the Atlantic? A. No, sir.

Q. Why not?

A. Well, they were a little out of the way. I would have to go up to Nieland.

Q. Where is that?

A. That is half-way between here and Beaumont. If I wanted to ship out with them, I would have to have a record and discharges from the Sun Oil, that I had sailed with them, or I would not be able to get a job.

Q. You mean they discriminate?

A. So I have understood. I have tried to get a job before, and they asked me if I ever sailed with them, and I said no, and they said they just couldn't use me.

Q. How about the Atlantic?

(Testimony of Clarence Buckless.)

A. I never sailed with the Atlantic.

Q. Why didn't you call the Atlantic?

A. Well, I didn't know just where they were or nothing about them.

Q. Couldn't you inquire?

A. I perhaps could have.

Q. You didn't though? A. No.

Q. And Cities Service? [840] A. No, sir.

Q. You didn't call them? A. No, sir.

Q. Why not? A. Well——

Q. What?

A. I was intending in shipping out right away, in a few weeks, with The Texas Company, and I didn't want to go ahead and get a whole lot of companies calling me up, expecting me to work for them, and not be there for them.

Q. That is your reason? A. Yes, sir.

Q. There were a lot of men on the beach, weren't there?

A. There were quite a few.

Q. And you were out of work? .

A. Yes, sir.

Q. Now, don't you think you should have at least tried to get a job from the Atlantic and Cities Service?

A. Well, I have three or four companies in view, and I thought I could get a job out of one of those.

Q. If you were out of work a few weeks, it didn't matter much, did it? A. No.

(Testimony of Clarence Buckless.)

Q. So that you just registered and let the matter rest?
A. Yes, sir. [841]

Q. You made no real strenuous effort to get on?

A. Oh, if I ran out of money and got hungry, I guess I would have.

Q. You had enough money to carry you on?

A. Yes, sir, at that time I did.

Q. You didn't try to get any employment on land, did you?
A. No, sir.

Q. Now, who told you that you were hired on the SS "Washington"?
A. Who told me?

Q. Who told you they were willing to take you on the SS "Washington" after you had registered?

A. They called me up at my house.

Q. Who?

A. Dave, down at the Institute.

Q. What did he say?

A. He said: "Do you want a quartermaster's job on the "Washington?" And I said: "Yes, sir."

Q. Did he tell you where to go?

A. He said: "Come down here and I will give you a slip to get through the gate."

Q. Did he ask you if you were an N. M. U. man?

A. No, sir.

Q. Were you ever asked by Dave or anybody at the Institute whether you were an N. M. U. man?

[842]

A. No, sir.

(Testimony of Clarence Buckless.)

Q. So far as you know, they didn't know, is that right? A. No.

Q. What? A. No.

Q. And do you know whether they knew?

A. No, I don't know.

Q. You don't know whether they knew or not?

A. No, I don't.

Q. You didn't tell them, anyway?

A. I did not.

Q. Now, when you went aboard the SS "Washington", did the captain or any of the officers ask you if you were an N. M. U. man?

A. No, sir. The second mate shook hands with me and was glad to see me back there.

Q. Had he known you before?

A. I was on there before.

Q. That is right?

A. And so the crew welcomed me back.

Trial Examiner Myers: That was Dilbert?

A. That is the same trip he was on.

Q. (By Mr. Van Dusen) They didn't act as though they were discriminating against you, did they?

A. No. They were glad to see me back. [843]

Q. They were glad to have you?

A. Yes, sir.

Q. They didn't not in any way indicate that you were the last man they wanted on the boat, did they? A. No, not at that time.

(Testimony of Clarence Buckless.)

Q. That is the time I am talking about, when you went on. A. No, sir.

Trial Examiner Myers: Did you conduct any union activities on the "Washington"?

A. Never before that, no, sir.

Q. (By Mr. Van Dusen) You had on the "Nevada" though?

A. On the "Nevada", yes, sir.

Q. Now, Mr. Buckless, you left the SS "Washington"— [844]

—withdraw that. After you left the SS "Washington" on or about July 14, 1938, what did you do to obtain employment?

A. Registered at the Institute.

Q. Yes. N. M. U. Hall? A. No, sir.

Q. Didn't register there? A. No, sir.

Q. Why not. A. For no reason.

Q. What? A. For no reason at all.

Q. Wasn't it hard to get a job at that time?

A. Well, I didn't think it would be as hard as it has been.

Q. You have not yet registered over at the N. M. U., have you? A. No.

Q. You have been out now a couple of months, haven't you?

A. Yes. I would not have been if men had not been shipped out over my head.

Q. But you told me you didn't register at the N. M. U. Mall?

(Testimony of Clarence Buckless.)

A. I said at the Institute.

Q. Let me understand you. I understood you to say that when you left the "Washington" you registered at the Institute? A. Yes, sir.

Q. Then I asked you whether you registered at the N. M. U. [845] Hall, and you said——

A. No. I said "no".

Q. And you have not registered at the N. M. U. Hall since? A. No.

Q. Therefore you are not on the N. M. U. list, are you? A. No.

Q. So that you cannot possibly get a job through the N. M. U. Hall? A. No.

Q. Is that "no", or "yes"? A. No.

Q. You cannot get a job—— A. No.

Q. If you are not registered on the N. M. U. list you cannot get a job through the N. M. U. Hall?

A. No.

Q. Then you cannot get a job through the N. M. U. Hall? A. No.

Q. Then you cannot get a job through the N. M. U. Hall right now, can you?

A. No.

Mr. Van Dusen: Mr. Examiner, will you please ask that question.

Mr. Wright: He has answered.

Q. (By Mr. Van Dusen) Can you get a job right now through [846] the N. M. U. Hall?

A. No. If I was registered I could.

(Testimony of Clarence Buckless.)

Q. But you are not registered?

A. I am not registered. I cannot.

Q. Why didn't you register?

A. I have no reason.

Q. You have no reason?

A. I have no reason.

Q. Haven't you needed employment since July 14, 1938? A. Perhaps.

Q. I mean have you or have you not? You know. You are the best judge.

A. Yes. That is personal, that I would rather not answer. That is my own affair.

Q. I don't want to know anything about your affairs?

A. It is my money. It is personal. If you are going to ask me, I have got to tell all the boys, I guess.

Q. When you left the SS "Nevada" you registered in the N. M. U. Hall, didn't you.

A. Yes, sir.

Q. Why didn't you do it when you left the SS "Washington"? A. For no reason at all.

Q. Now, if you had registered you might have gotten a job through the N. M. U. Hall, isn't that correct? A. I might have. [847]

Q. Isn't it a fact that there are a number of companies getting seamen through the N. M. U. Hall? A. I believe so.

Q. Can you name some of those companies?

(Testimony of Clarence Buckless.)

A. Yes, I think so.

Q. Please name some? A. Gulf.

Q. Yes.

A. Tidewater, C. D. Mallory, Standard Oil.

Q. Yes. A. Lykes Bros.

Q. Lykes Bros.? A. Yes, sir.

Q. Any others?

A. American West African Line.

Q. Any others?

A. That is about all I can think of right now.

Q. The Gulf sends a lot of ships in here, doesn't it?

A. About the same as The Texas. I don't know as it has as many. They have got quite a few tied up now.

Q. If you take all those companies together, they send in quite a few ships, don't they?

A. They don't run in here.

Q. In the area, Houston; I mean in this vicinity?

A. Yes, in the vicinity, but not right into Port Arthur, not [848] generally. You might get one in here once in a while.

Q. But they get their men through this N. M. U. Hall? A. Yes, if they run in here.

Q. Where do they get their men if they don't?

A. They get them in Beaumont.

Q. Did you register in Beaumont?

A. No, sir.

(Testimony of Clarence Buckless.)

Q. Wouldn't the N. M. U. call you right away and let you know, or get in touch with you?

A. No, sir.

Q. Don't they do that for you? A. No, sir.

Q. If you were on that list up there at Beaumont and had a job they wouldn't let you know?

A. No, not unless I was there to take a job.

Q. I mean if there was a chance for you to get there in time, of course?

A. I suppose if I arranged with the man to call me up, and would give him the twenty cents or thirty cents, whatever it costs for the telephone call. But if I was to do that I might as well wait there.

Q. The N. M. U. would trust you for the twenty or thirty cents, wouldn't they?

A. That is not their policy.

Trial Examiner Myers: What has that got to do with it? [849]

Mr. Van Dusen: All right, if you don't want me to ask him.

A. Houston is done the same way.

Q. (By Mr. Van Dusen) Now, these companies on the N. M. U. list, Gulf, for example, did you call up the Gulf offices and try to get a job?

A. No, sir.

Q. How about the Tidewater? A. No, sir.

Q. C. D. Mallory? A. No, sir.

Q. Standard Oil of New York? A. No, sir.

Q. Lykes Bros.? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. American West African Line?

A. No, sir.

Q. Did you try to get a job on land?

A. No, sir.

Q. Now, Mr. Buckless, you just wanted to get a job with a Texas ship, didn't you; isn't that a fact?

A. The Sabine Towing is running in here. I would like to get a job with them.

Q. Principally you wanted to get a job on a Texas ship. Isn't that why you registered on The Texas list?

A. Because I figured I could. [850]

Q. Had you asked the Sabine Towing for a job?

A. Yes.

Q. You did? A. Yes, sir.

Q. Why did you want to get on a Texas ship, and make no effort to get on these other ships?

A. I did make an effort to get on the other ships, but, as I say, they wouldn't take me. [851]

Q. The ships you have mentioned that use the N. M. U. Hall, you would have to register at the N. M. U. Hall to get those?

A. Yes, sir, I would have to register at the N. M. U. Hall to get those.

Q. That is where they get their men?

A. Perhaps I didn't want to go to China or some other place that those ships go.

(Testimony of Clarence Buckless.)

Q. Some of them go coastwise, don't they?

A. Perhaps so.

Q. Of course when you were called you didn't have to take a job?

A. No, I could wait until the next one if I could afford it.

Q. Is that what you proposed to do?

A. No.

Q. Just going to wait until this case is over?

Mr. Wright: Mr. Examiner, I object to that question.

Trial Examiner Myers: Objection sustained.

Q. (By Mr. Van Dusen) Now the real reason, Mr. Buckless, is it not, is that you wanted to organize the Texas ships?

A. Is that Port Arthur is my home port now, and I would like to ship through The Texas Company, as they run in and out of here. That is my main reason.

Q. You know as well as I do that the Gulf ships come into Port Arthur. [852]

A. I don't like to sail on the Gulf.

Q. Isn't the real reason that you want to organize the Texas ships, isn't that the real reason?

A. No, sir.

Q. Is the real reason that you want to get as much money as you can out of the Texas Company as the result of this case?

Mr. Wright: I object to that.

(Testimony of Clarence Buckless.)

Trial Examiner Myers: Objection sustained.

Mr. Van Dusen: Exception.

A. No, sir.

Trial Examiner Myers: You don't have to answer. Strike out that answer.

Mr. Van Dusen: He may want it to go in. May I have just a minute?

Trial Examiner Myers: Suppose we take a five minute recess.

(Short recess.)

Q. (By Mr. Van Dusen) Mr. Buckless, I think in your testimony you stated that on the Texas ships you got more nights off than on most other ships, while on the other ships you had the same watch?

A. What I meant was the Gulf. I meant they had nights off that the Gulf didn't, and there were practically only two ships coming in and out of here that I might have been able to ship on. [853]

Q. That is one reason The Texas Company doesn't give overtime, that they give nights off, isn't that correct?

A. Well, it is their agreement. I don't know just why they are doing it now.

Q. The Texas Company has no agreement with the union? A. No.

Q. So far as you know? A. No.

Q. Well, isn't it a fact that many seamen prefer nights off to the small overtime they get?

(Testimony of Clarence Buckless.)

A. I believe so, a lot of them. I would.

Q. Now thinking over your testimony, do you recall having been discharged by any other company in addition to those you have named in this court room?

A. Not that I can name right now.

Trial Examiner Myers: When you say discharged, you mean fired?

Mr. Van Dusen: I mean fired.

A. Fired. Yes, I took it that way.

Q. Have you ever been arrested?

A. No, sir.

Q. Never been arrested for being drunk and disorderly?

A. No, sir.

Mr. Van Dusen: I believe that is all.

Trial Examiner Myers: Any redirect? [854]

Mr. Martin: Yes, Mr. Examiner.

Redirect Examination

Q. (By Mr. Martin) Mr. Buckless, after you were fired from the "Nevada" and the "Washington" did any officer of The Texas Company, Marine Division, offer to help you get a job?

A. No, sir.

Q. Did any officer of The Texas Company, Marine Division, tell you they would help you get a job in any other company?

A. No, sir.

Q. Did the fact ever come to your attention that any official of the Texas Company, Marine Division was making any effort to secure you a job?

(Testimony of Clarence Buckless.)

A. No, sir.

Q. Are your answers to the previous questions the same with respect to the fact that you were fired from the "Washington"? A. Yes, sir.

Q. Mr. Buckless, while you are living in Port Arthur could you register to ship out of New York City? A. Yes, sir.

Q. Could you register to ship out of Philadelphia? A. Yes, sir.

Q. Could you register to ship out of Los Angeles? A. Yes, sir.

Q. But you didn't? A. No, sir. [855]

Q. Now when you boarded the "Washington" in 1938 was your reception such as would have been given a habitual drunkard? A. No, sir.

Q. Mr. Buckless, is it one of your desires, as a member of the National Maritime Union, to assist that union in its efforts to organize the ships of The Texas Company, Marine Division?

A. Yes, sir.

Q. What was your salary when you were fired from the "Ayrian"?

A. \$80.00 I believe, \$80.00 a month, I believe the boys were getting.

Q. Plus board and room?

A. Plus board and room.

Q. And overtime? A. No overtime.

Q. Did you testify that the captain met you on

(Testimony of Clarence Buckless.)

the dock at Port Arthur at the beginning of your last trip on the "Nevada"? A. Yes, sir.

Q. About what time of day was that?

A. 12:30, on or about 12:30.

Q. Can you remember when you signed the shipping articles for that last trip on the "Nevada"?

A. I really couldn't tell you right to the time.

[856]

Q. Was it after 12:30 or before?

A. It was that evening, I believe.

Q. That evening? A. I believe so.

Q. Are you quite sure?

A. I am not positive, no, sir.

Q. Are you sure it was after this incident with the captain?

A. I am not positive whether it was before or after.

Q. Do you remember what you were doing just before you were called to sign the shipping articles?

A. No, sir.

Q. When you signed the shipping articles that trip did the captain ask you if you had brought that beer aboard?

A. No, sir, he never asked me.

Q. Did the mate ever ask you? A. No, sir.

Q. Did you testify on cross examination that you had brought some complaints to the attention of the officers of any ships except Texas ships?

A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. Do you remember what ship or ships?

A. Yes, sir, the SS "Broad Arrow".

Q. The SS "Broad Arrow"? A. Yes, sir.

Q. Did you bring complaints on the "Broad Arrow" on your own [857] behalf or on behalf of the crew as well as yourself?

A. On behalf of the crew.

Q. Did you so inform the officers of the "Broad Arrow"? A. Yes, sir.

Q. Were you fired from the "Broad Arrow"?

A. No, sir.

Q. Did you bring complaints or grievances to the attention of the officers of any ships other than the "Broad Arrow" and The Texas Company ships? A. No, sir.

Q. Did you testify that you were a delegate on the "Broad Arrow"? A. Yes, sir.

Q. Did you say, "Yes, sir"? A. Yes, sir.

Q. Have you ever been a delegate on any boat other than the Texas Company ships, except the "Broad Arrow"? A. That is all.

Q. Did you testify that you were a delegate on The Texas Company ships "Nevada" and "Washington" at the time you were fired from them? A. I was delegate——

Q. Strike that. Did you testify that you were active in union activities upon the "Ayrian" when you were fired from it? [858] A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. And you were fired from it? A. Yes, sir.

Q. Did you testify that you were a delegate on the Texas ship "Nevada" and brought a number of complaints and grievances to the officers of the ship while you were on board it? A. Yes, sir.

Q. And were you fired from the "Nevada"?

A. Yes, sir.

Q. Did you testify——

Mr. Pipkin: Mr. Examiner, all this seems to be cumulative and repetitious. We object to it on that ground.

Trial Examiner Myers: What is the purpose of this testimony, Mr. Martin?

Mr. Martin: I want to clear the record and have it all in one place. One more question.

Trial Examiner Myers: All right, I will allow one more question.

Q. (By Mr. Martin) Did you testify, Mr. Buckless, that while you were on the Texas boat "Washington" in 1938 you were active in union activities?

A. Yes, sir.

Q. And were you fired from the "Washington"?

A. Yes, sir. [859]

Q. (By Mr. Martin) Did you testify that on the "Broad Arrow" you were granted most of your requests? A. All of them.

Q. And were you fired? A. No, sir.

Q. Did you testify that on The Texas Company

(Testimony of Clarence Buckless.)

ships you were granted some of your requests and refused some of your requests? A. Yes, sir.

Q. And were your fired? A. Yes, sir.

Q. Mr. Buckless, has a sailor the right to change his mind as to what line or what ship he wishes to sail on at any given time?

Mr. Pipkin: Just a minute.

A. He has.

Trial Examiner Myers: Is there an objection?

Mr. Pipkin: He had already answered before I *could up*. Let it go.

Q. (By Mr. Martin) Did you testify that you would like to go back to work on either the "Nevada" or the "Washington"? A. Yes, sir.

Q. Did you specify a choice between those two?

A. Well, I quit the "Nevada" first. That was the ship I [860] thought I would like to go back on.

Q. You would like to go back on that ship of those two? A. Yes.

Q. Would you care to go back on any other Texas Company ships? A. Yes, sir.

Q. But of all Texas Company ships, which one would you prefer?

A. I would prefer the "Nevada."

Q. Did you testify on cross examination that while you were talking with this ordinary seaman, Dalton, there were some other things said than you related on direct examination?

A. Yes.

(Testimony of Clarence Buckless.)

Q. Do you remember what was said?

A. Yes.

Q. Please relate it if you can.

Mr. Pipkin: Mr. Examiner, this is repetitious. We object to it.

Trial Examiner Myers: As I remember, Mr. Van Dusen asked the witness a question and the witness wanted permission to elaborate and Mr. Van Dusen didn't want him to elaborate and I asked Mr. Wright to make a note of it and told him that he could bring it out on redirect examination.

A. This was—as I talked to this boy, I told him this was a Union ship and we were a hundred per cent N. M. U. [861] on there at the time and we would like to stay that way and I asked him if he would go up to the Union Hall and get a Union book. He had time then to go up and get it and come back to the ship; that I would give him a slip stating that he could get that. I was telling him that when the mate rushed him right off and told him to change his clothes and come out on deck.

Q. (By Mr. Martin) Did you ask him if he had ever been on a boat before? A. Yes, sir.

Q. What did he say?

A. He said no he hadn't.

Q. Did you ask him how he got the job?

(Testimony of Clarence Buckless.)

A. I believe I did.

Q. Do you remember what he said?

A. Yes. He said he got the job through some engineer in the company; an engineer on one of the company ships, a friend of his had got him the job.

Q. Did he say through whom?

A. No, he didn't say. I asked him how he got the job and he said an engineer on one of the ships. I didn't ask him the ship or the man's name or anything.

Q. Did you ask him how he got his Fink book or his Copeland book?

A. I believe this man helped him out on that too. He said [862] he signed papers for him to that effect to get him this book.

Q. Despite the fact that he hadn't been to sea for six months according to the rules?

A. Yes, sir.

Mr. Pipkin: I move that all this line of testimony be stricken because he has not identified the engineer in the first place. He doesn't know who he was. No officer or agent of the company was around when any of this took place. It has come from somewhere since yesterday, because he gave no such testimony yesterday. I move that it be stricken.

Trial Examiner Myers: Well, some of it was brought out on cross examination. Perhaps you were not here.

(Testimony of Clarence Buckless.)

Mr. Pipkin: I was here when this inquiry was gone into. I move that it be stricken for the grounds named.

Mr. Van Dusen: And furthermore, that I think Mr. Martin is testifying. His statement, "Despite the fact that * * *," if you will read that you will see it is a statement to which Mr. Buckless said "Yes." That is testimony.

Trial Examiner Myers: Will you read Mr. Van Dusen's argument. I am sorry I couldn't hear it.

(The objection was read.)

Mr. Van Dusen: It was not in the form of a question.

Trial Examiner Myers: Do you object to the form of the question? [863]

Mr. Van Dusen: I say it was not in the form of a question. He said "Despite the fact that * * *"

Mr. Wright: The testimony is that——

Trial Examiner Myers: Will you read the question?

(The last question and answer were read.)

Mr. Van Dusen: You see there is a statement calling for an answer. I would like to have a ruling. I don't think on redirect examination you can testify or lead a witness.

Trial Examiner Myers: I beg your pardon?

Mr. Van Dusen: I don't think on redirect examination you can testify for or lead a witness.

(Testimony of Clarence Buckless.)

Trial Examiner Myers: Of course not. Of course not. You didn't make that objection before.

Now please don't lead any more, will you, Mr. Martin? Let's get on with this.

Mr. Van Dusen: May I have a ruling on my motion to strike.

Trial Examiner Myers: Did you make a motion to strike?

Mr. Van Dusen: I thought I did. Well, I move now to strike that question and answer.

Trial Examiner Myers: Well, it is all in. We will leave it in, but please don't lead any more.

Q. (By Mr. Martin) Was it a custom for The Texas Company to ship ordinary seamen this way?

[864]

Mr. Pipkin: That is another leading question, Mr. Examiner.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) Do you know who lays down the rules concerning the qualifications of an ordinary seamen?

A. The steamboat inspectors, I believe.

Q. The steamboat inspectors? A. Yes, sir.

Q. Do you know whom they worked for?

A. The Government, I believe.

Q. The Federal Government? A. Yes, sir.

Q. Do you know what branch of the Federal Government?

A. Not exactly. I do know too in a way.

(Testimony of Clarence Buckless.)

Q. Mr. Buckless, did any of the mates or the captain direct or order you to instruct this new ordinary, Dalton, in seamanship? A. No, sir.

Q. They didn't?

A. They told me to help him, but not to—I don't know how you could—

Q. Was it to help him?

A. To help him. I guess you could bring that in there too.

Q. Told you to help him? A. Yes, sir.

[865]

Q. But they didn't tell you to instruct him in seamanship? A. No, sir.

Q. Mr. Buckless, did you testify that you tried to instruct this ordinary seaman, Dalton, in the proper methods of tying a certain knot?

A. Yes, sir.

Q. Do you remember what knot that was?

A. A square knot.

Q. Did you testify that you returned an hour after you first instructed him and found him still working on the problem. A. Yes, sir. [866]

Mr. Pipkin: Mr. Examiner, isn't there any end to this?

Mr. Van Dusen: He has got it in there three times already.

Mr. Pipkin: All the direct testimony now has been put back in the record again by the attorney for the government.

Trial Examiner Meyers: I thought you said you were only going to ask one question.

(Testimony of Clarence Buckless.)

Q. (By Mr. Martin) Would you characterize this effort of yours to teach this ordinary seaman how to tie a square knot as an attempt to instruct him in seamanship?

Mr. Van Dusen: Just a minute. Isn't that asking for a conclusion?

Trial Examiner Myers: Well, the form is a little awkward. I will allow it.

A. I would like to have that read over, please. (The last question was read.)

A. There is one word there that I don't quite understand.

Trial Examiner Myers: Well, when you asked this fellow to make a square knot and he didn't know how to do it, then you showed him how to do it, didn't you? A. Yes, sir.

Q. And then you wanted him to learn it by practicing it? A. Yes, sir.

Q. Was that your idea of teaching him seamanship? A. That was my idea, yes. [867]

Q. (By Mr. Martin) Mr. Buckless, is a square knot a hard or an easy knot to tie?

A. Very easy.

Q. Mr. Buckless, do you know who eats at the officers' mess table on Texas Company boats?

A. The three mates, the four engineers, the captain, the radio operator, and the steward and the mess boys amidships, I guess, afterwards.

Q. How about the chief engineer?

A. The chief engineer.

(Testimony of Clarence Buckless.)

Q. Where does he eat?

A. He eats in the officers' mess.

Q. Is that true on the SS "Washington"?

A. I believe it is.

Q. Have you any reason to believe otherwise?

A. No, sir.

Trial Examiner Myers: Was it true while you were working on the SS "Washington"?

A. Sir?

Trial Examiner Myers: Was it true while you were working on the SS "Washington"?

A. As far as I know.

Q. (By Mr. Martin) In that conference or conferences with the captain of the "Washington" when Zehreel and West, either of them or both of them, were present, did they take [868] part in the discussions?

A. No, sir, they was only asked to come along with us as the whole thing was about me.

Q. You mean that is the only time they went?

A. Yes, that is the only time they had anything to do with——

Q. (Interrupting) Just once?

A. Just that once.

Q. On the "Washington"?

A. That is all.

Q. The discussion of overtime?

A. No. The discussion of me going over the side painting and they were quartermasters along with me also.

(Testimony of Clarence Buckless.)

Q. Oh, they were quartermasters?

A. Yes, but I was the one told to go over the side.

Q. Who did the talking?

A. I done the talking after the captain told Gordon Rosen to go back aft; that he wouldn't listen to him and Zinkiewycz. He said he would talk to me.

Q. As an individual? A. As an individual.

Q. Did West and Zehreel leave?

A. No, they stayed there until I got done talking.

Q. Were they introduced to the captain as delegates? A. No, sir.

Q. Did either of them tell the captain they were delegates? [869] A. No, sir.

Q. Did the captain ask them if they were delegates? A. No, sir.

Q. Were they delegates? A. No, sir.

Q. Did Mate Tranberg on the "Nevada" ever tell you that Rosen performed his dufies poorly?

A. Never.

Mr. Pipkin: That is another leading question, Mr. Examiner.

Trial Examiner Myers: Sustained.

Q. (By Mr. Martin) Did Tranberg on the "Nevada" ever comment on Rosen's work in your presence? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. Do you remember a specific instance?

(Testimony of Clarence Buckless.)

A. I remember the first day he came aboard the ship.

Q. Who came aboard? A. Gordon Rosen.

Q. Do you remember anything that was said?

A. Yes, sir, the mate said, "He is a fine man. I am glad to see him back with us. He used to be with me a few years ago."

Q. Tranberg said this? [870]

A. Yes, sir.

Q. What was your job?

A. My job was boatswain.

Q. Did you start to say something else?

A. No, sir.

Q. How did you say you got your job on the "Nevada"?

A. As we were tying up to the dock or tied up to the dock, just finished coming from the first trip from Corpus Christi, the mate called me. He says, "Buckless, do you want the boatswain's job?"

Q. Oh. I was referring rather not to how you got the boatswain's job, but how you got the A. B.'s job before you boarded her.

A. I got the job—on the "Nevada"?

Q. Yes.

A. I got the job through one of The Texas Company men.

Q. Who?

A. I don't know what his name is. I was pointed out to this fellow as an A. B. and he asked me if I wanted a job.

(Testimony of Clarence Buckless.)

Q. Where were you?

A. I was on the corner of Dallas and Fifth Street.

Q. Port Arthur? A. Yes, sir.

Q. Then what happened? Did this man come over to you?

A. Yes, sir. I asked him what ship it was. [871]
He said, "The 'Nevada'."

I said, "I turned down the quartermaster's job on there the day before yesterday."

He said, "Well, this is an A. B.'s job."

I said, "I will take that."

He said, "How soon will you be ready?"

I said, "Well, I haven't ate dinner yet."

"Well," he says, "eat dinner. I will be back after you in half an hour."

Q. Do you know that fellow's name?

A. No, I don't.

Q. Did he say who had sent him?

A. Mr. Meyer.

Q. He said that? A. Yes, sir.

Q. Did you make an appointment to meet him?

A. Yes, sir.

Q. Where did you meet him?

A. I met him right at the corner of Sixth and Dallas.

Q. Port Arthur? A. Yes, sir.

Q. What did you do after you met him?

A. I got in the machine and headed for Galveston.

(Testimony of Clarence Buckless.)

Q. Whose machine?

A. A Texas Company machine, I believe. There was a Texas [873] star on the side, the regular Texas oil sign on the door, and I took it as a Texas Company machine.

Q. Who drove the machine?

A. I don't know.

Q. Mr. X? A. Who?

Trial Examiner Myers: The same fellow?

A. The same fellow, yes, sir.

Q. (By Mr. Martin) The same fellow?

A. Yes, sir.

Q. Where did you say you drove to?

A. He took me to Galveston.

Q. Did he tell you he was going to take you to Galveston? A. Yes, sir.

Trial Examiner Myers: Where were your clothes?

A. I had my clothes right with me.

Q. (By Mr. Martin) When you got to Galveston then what?

A. When I got to Galveston he was a little mixed up. We didn't go clear to Galveston. We stopped at the Bolivar Ferry, I believe it is. He said he was supposed to meet a boat there to take me out to the ship. The ship was lying just a little ways from there. Instead of that he should have taken me around to another ferry that goes across to the drydock. So pretty soon Mr. Buckland, I believe, the port engineer——

(Testimony of Clarence Buckless.)

Q. (Interrupting) What is he? [873]

A. The port engineer.

Q. On what?

Mr. Pipkin: The Port of Galveston.

A. The port engineer to Port Arthur, I believe, isn't he, or Galveston? I don't know.

So he directed this man to take me around to this certain place. We got on a boat that took me out to the "Nevada", a small motor boat.

Q. Then you boarded the "Nevada", did you?

A. Yes, sir.

Q. How much later did the "Nevada" sail?

A. About five minutes.

Q. Five minutes after you got aboard her?

A. Yes, sir.

Q. Did anybody else get aboard with you?

A. Yes.

Q. Who else?

A. There was a mess boy and a quartermaster.

Q. Were they in the car driving over from Port Arthur to Galveston? A. Yes, sir.

Q. They were? A. Yes, sir.

Q. While you were driving from Port Arthur to Galveston did you learn where this man had found them? [874] A. No.

Q. Did you learn from them or anybody else afterwards where he had found them?

A. Yes. One was down at the gate.

Q. Which gate?

(Testimony of Clarence Buckless.)

A. Down at the Texas gate. I learned afterwards that he was down at the gate and that they picked him up down there.

Q. On the dock?

A. Not on the dock, but at the gate leading into the dock at the Texas Oil Company.

Q. Do you remember the mess man's name?

A. No, I don't.

Q. Now how about these other two people?

Mr. Pipkin: Mr. Examiner, I can't see the materiality of this.

Mr. Martin: It is very important on the 8-1 charge.

Trial Examiner Myers: Well now let's let it go for a while.

A. No, I can't think of the man's name; of either one of them.

Q. (By Mr. Martin) You can't think of the names of the other two men?

A. No, I couldn't.

Q. What were their jobs?

A. Well, I said quartermaster, but he was an A. B. I made a [875] mistake there.

Mr. Van Dusen: Mr. Examiner, just for the record I would like to say that I move to strike out this testimony on the ground that it is not within the scope of this particular complaint.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception.

(Testimony of Clarence Buckless.)

Mr. Martin: Let the record show that this testimony is offered under Section 8, Subsection 1, of the National Labor Relations Act and comes under allegations contained in Paragraph 9 of the complaint in this case. It is offered——

Trial Examiner Myers: I understand your position. Will you ask the next question?

Mr. Martin: Don't you think the record should understand it too?

Trial Examiner Myers: No, no.

Q. (By Mr. Martin) Did you say one of these men, Mr. Buckless? Did you say one of these men?

A. One of these men were an A. B. instead of quartermaster, as I said before he was a quartermaster, that came over from Port Arthur to Galveston, but it was an A. B. and a mess boy and myself.

Q. Now when this man met you on the street corner in Port Arthur did he ask you if were registered at the Seaman's Institute? [876]

A. Yes, sir.

Mr. Pipkin: That is a leading question.

Q. (By Mr. Martin) Did you tell him you were? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. What did he tell you?

A. He asked me if I was on the list.

Q. Did he ask you whether you were on the top of the list? A. No, sir.

Trial Examiner Myers: Did he ask you whether you were on the Texas list or the open list?

(Testimony of Clarence Buckless.)

A. The Texas Company list. We registered with the Texas list.

Q. (By Mr. Martin) Did he ask you whether you were a union member?

A. No, sir.

Q. Did he ask you whether you were registered at the Union Hall? A. No, sir.

Q. Did he say anything about the rotary system?

A. No, sir.

Q. Did he say anything about where The Texas Company hired its men? A. No, sir. [877]

Q. As you were riding from Port Arthur to Galveston——

Mr. Williams: Mr. Examiner, we suggest that the witness not answer quite so fast, because we do want to preserve some exceptions now for the record.

Trial Examiner Myers: Yes. Please don't answer the question when you see counsel for the company rising to enter an objection.

A. All right, sir.

Q. (By Mr. Martin) As you were riding from Port Arthur to Galveston was there any conversation in the automobile? A. No, sir.

Q. When you met this man on the street corner were you registered at any shipping place in Galveston? A. No, sir.

Q. Do they have a Seamen's Institute in Galveston.

(Testimony of Clarence Buckless.)

A. I really don't know that. I don't believe they do.

Q. Were you asked if you were registered in Galveston? A. No.

Q. No? A. No.

Q. After you boarded the ship did any officer ask you how you were hired? A. No, sir.

Mr. Van Dusen: Mr. Examiner, may I have my motion to strike for all this testimony without repeating it each time? [878]

Trial Examiner Myers: You mean you object to this line of questioning?

Mr. Van Dusen: I mean with reference to that point that we discussed when I made my motion to strike before and this is a continuation of that line of testimony.

Trial Examiner Myers: Well, are you objecting to the line of questions? That is what I want to know.

Mr. Van Dusen: Yes.

Trial Examiner Myers: I will overrule your objection and ask the reporter to please note an exception.

Mr. Martin: There is piles of this kind of testimony in the record all day yesterday and the day before.

Trial Examiner Myers: Now, Mr. Martin, please don't argue after I rule in your favor. Please go ahead.

(Testimony of Clarence Buckless.)

Q. (By Mr. Martin) Did any officer ask you if you had gotten the job through a registration hall?

A. No, sir.

Q. Were you asked if you were a union member?

A. No, sir.

Mr. Martin: Mr. Examiner, those are all the questions I want to ask the witness at this time. However I want to reserve the right to recall Mr. Buckless for rebuttal testimony later on.

Mr. Van Dusen: I have just one or two questions raised by redirect examination. [879]

Trial Examiner Myers: All right.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Buckless how long on an average do ships like the Texas ships stay in port before leaving?

A. Approximately 24 hours. [880]

Q. Now, isn't it common practice if they should have to leave hurriedly and are in need of an A. B. to get them off the dock or some place in close proximity to the dock?

Mr. Wright: Mr. Examiner, I would like to say this: If this man knows.

Trial Examiner Myers: Mr. Van Dusen, will you please let Mr. Wright make his objection.

Mr. Van Dusen: He is not making an objection.

Mr. Wright: I am going to object to the question until you put in there "if this man knows." The company ought to know their policy better than this man.

(Testimony of Clarence Buckless.)

Mr. Van Dusen: All right, I will put it in. Will you read the question please, Mr. Reporter?

(The last question was read.)

Q. (By Mr. Van Dusen) (Continuing) If you know?

A. Could I explain that instead of saying "yes" or "no"?

Q. Yes.

Trial Examiner Myers: Tell us in your own words .

A. Before a ship sails, an hour or so, it is the custom of one of the mates or the mate or the engineer in their division to check up on their men. An hour's time is ample time to call the Institute or the Union Hall and get that man and have him down there.

Q. (By Mr. Van Dusen) Now, suppose a good man tells the mate that he will sign new articles and that he may be a [881] late in getting to the ship. Under those circumstances is it possible of your own knowledge, that the mate or the captain might get a man off the dock or in close proximity to the dock? A. It has been done.

Q. I see. Now——

Trial Examiner Myers: Is it done often? Is it done often?

A. By The Texas Company, I believe it is done quite often.

Q. (By Mr. Van Dusen) Now, they do have to have a certain number of A. B.'s and ordinaries and so on, don't they? A. Yes, sir.

(Testimony of Clarence Buckless.)

Q. So that if in an emergency they need one of those men they have to get them quickly, don't they?

A. Yes, sir.

Q. Now, you testified on Mr. Martin's redirect examination that no officer of The Texas Company made any effort to get you a job. Did you talk to any?

A. No, sir.

Q. Now, in answering one of Mr. Martin's questions, you said one of your desires was to organize The Texas Company, isn't that right?

A. Was it brought out just like that?

Q. Well, I think so. Is that what you said? I thought Mr. Martin asked you whether it was not one of your desires to organize The Texas Company. [882]

A. Yes, sir.

Q. Is that right?

A. It is.

Q. Is it also one of your desires to organize other companies not having signed agreements with the N. M. U.?

A. Yes, sir.

Q. Now, you testified that while on the SS "Broad Arrow", a Standard of New York vessel, you represented the crew in connection with complaints which were made to the captain, is that right?

A. Yes, sir.

Q. Did you say that was the only time on ships other than The Texas Company you approached captains of vessels with respect to complaints?

A. Yes, sir.

Q. You didn't include in that, however, did you, individual complaints?

A. No, sir.

(Testimony of Clarence Buckless.)

Q. So on a number of occasions in your twenty years' experience individual complaints might have been made to captains of these other vessels, isn't that so? A. No doubt.

Q. Now, you don't know of your own knowledge whether complaints on behalf of the crew were not made to the captains of these other vessels, do you? [883]

A. Read that question please.

(The last question was read.)

A. No, I don't.

Q. (By Mr. Van Dusen) Now, I believe you said that all of these ships operated in practically the same manner. Didn't you say that sometime today? A. Yes, sir.

Q. So that complaints generally would be about the same on those ships, wouldn't they?

A. Operations and conditions——

Q. (Interrupting) Yes, conditions.

A. (Continuing) Are different.

Q. And are you now changing your testimony?

A. No, the operation——

Q. Well, I mean the operations, handling the crew and everything on board the ship; there are practically the same grievances and so on, isn't that so? A. Yes.

Mr. Van Dusen: I believe that is all.

Redirect Examination

Q. (By Mr. Martin) Mr. Buckless, is it one of your duties as a member of the Union to help con-

(Testimony of Clarence Buckless.)

duct union activities in companies having a contract with the union now? A. Yes, sir.

Q. Did The Texas Company or any official ever take the [884] initiative and call you and offer to help you get a job? A. No, sir.

Mr. Martin: That is all.

Trial Examiner Myers: You are excused Mr. Buckless.

The Witness: Thank you.

(Witness excused.)

Mr. Van Dusen: There is just one thing before we quit, Mr. Examiner:

You will recall that on Monday of this week Mr. Davis amended his complaint to include two additional seamen; namely, Rufus Andrews and Jack Wilson; and I had the usual five days in which to answer. Those five days expire tomorrow.

Now, I have had a preliminary investigation made—not a complete investigation however—but I have sufficiently investigated to enable me to enter it now.

Now, may I do as Mr. Davis did and enter the denial on the record without the necessity of filing a formal answer? Here is what I would like to do;

I would like to say that in respect to the charges regarding seamen, Rufus Andrews and Jack Wilson, who were included in the complaint by counsel for the Labor Board on Monday, let it be agreed that the charges in respect to such men may be deemed denied in the same manner and to the same

effect as if included in the amended answer. [885]

Is that agreeable to you, Mr. Martin?

Mr. Martin: That is agreeable.

Mr. Van Dusen: Is it agreeable to you, Mr. Wright?

Mr. Wright: Yes, sir.

Trial Examiner Myers: It may be so stipulated.

Mr. Van Dusen: And it is also stipulated that it will not be necessary for the Respondent to file a formal answer. Is that agreeable?

Mr. Martin: That is agreeable.

Mr. Wright: Right.

Trial Examiner Myers: It is so stipulated.

(Discussion off the record.)

ALBERT P. LORTIE,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

(By Mr. Martin.) [886]

I said, "You are the chief mate?"

He said, "Yes."

He said, "You are the new A. B.?"

I said, "Yes, sir."

He said, "Do you belong to any union?"

I said, "Yes, sir. I belong to the N. M. U. Does that make any difference?"

(Testimony of Albert P. Lortie.)

"Well," he said, "I will tell you" he said, "We don't want any discontent in the crew on account of any union, because," he said, "We don't recognize any union."

Well, I said, "You shall not have it." [889]

Q. Were those minutes placed anywhere? Any special place on the boat?

A. Only in his locker and one copy was posted on the bulkhead of the P. O. mess.

Q. Where was it posted?

A. On the bulkhead of the P. O. messroom; petty officer's messroom.

Q. A copy of the minutes of every meeting was posted there?

A. From the time I was on there until I got off, yes, sir.

Q. Every meeting? A. Yes, sir.

Q. Did you read any of those minutes?

A. Yes, sir.

Q. Was the name of the chairman of the meeting on the minutes? A. Yes, sir.

Q. What was that name?

A. Albert P. Lortie.

Q. Did you see copies of any of those minutes posted on the bulkhead? A. Yes, sir.

Q. Who eats in the petty officer's messroom?

A. The boatswain, the quartermasters, the oilers, and watertenders.

Trial Examiner Myers: Did you eat there? [893]

A. No, sir, just the petty officers.

(Testimony of Albert P. Lortie.)

Q. (By Mr. Martin) Is coffee drunk there?

A. Yes, sir.

Q. Who drinks coffee there?

A. Everybody of the crew; officers and all.

Q. The mate? A. Yes, sir.

Q. The captain? A. Yes, sir, at times.

Q. Not always? A. Not always.

Q. What do you mean when you say "drink coffee"?

A. That is at 10:00 o'clock in the morning and 3:00 o'clock in the afternoon.

Q. Everybody takes a little vacation?

A. About fifteen or twenty minutes.

Q. The mates too?

A. Yes, sir, except the one on watch.

Q. Did you ever see the chief mate in the P. O. messroom? A. Yes, sir.

Q. Did you ever see him reading the minutes of any of those meetings?

A. Two different times for the chief mate.

Q. Two different times for the chief mate?

A. Yes, sir. [894]

Q. Two different meetings? A. Yes, sir.

Q. Did you ever see the captain in the P. O. messroom? A. Yes, sir.

Q. Did you ever see the captain reading the minutes of any meetings? A. Once, sir.

Q. Of one meeting? A. One meeting.

Q. Do I understand or is it or is it not correct that when you would take down one set of minutes you would put up the next set?

(Testimony of Albert P. Lortie.)

A. That is correct.

Q. When would the minutes be put up?

A. As soon as he could rewrite them.

Q. Who would put them up?

A. As a rule the recording secretary.

Q. Did you ever put any up?

A. Not that I recall.

Q. Did you ever see any other officer reading the minutes of any meeting there?

A. Some of the engineers have.

Q. Did you see them? A. Yes, sir.

Q. Do you remember any particular one? [895]

A. The three—well, the first assistant, second assistant, and third assistant.

Q. You saw them? A. Yes, sir. [896]

Q. (By Mr. Martin) Mr. Lortie, did you testify that minutes of union meetings would be placed on the bulletin board on the bulkhead of the “Roanoke” while you were on it? A. I did.

Q. How long would those minutes remain there?

A. Until the minutes of the following meeting were drawn up; were rewritten.

Q. And then what would happen?

A. The old ones—the ones of the previous meeting, I mean, would be taken down and they would be posted in their place.

Q. I see; minutes of the old meeting would be taken down and the minutes of the new meeting would be put up? A. That is it.

(Testimony of Albert P. Lortie.)

Q. Is it true then, or is it not true, that at all times during that trip there were minutes of some union meeting on the bulkhead?

A. Up to the time that there was one set disappeared in Port Arthur. [912]

Q. Did you miss a watch?

A. Yes, sir. I paid that watch back though.

Q. You paid that watch back?

A. Yes, sir. The mate said, "We will call it quits then." He said, "We will call it a closed issue."

Q. He did?

A. Yes, sir. He wanted me to work the time back. I paid one watch. It wasn't a watch either. We were all on day watch and when he sent us on watch I got another fellow to work [921] me and I paid him at the rate of an hour overtime; that hour overtime rate. The other four hours I couldn't get anybody. We were all working day work. So that is the four hours he was talking about. He wanted me to work them back.

And I said, "Mate, I will tell you. It is all according to how they feel, because we don't advocate working time back in the union," and I said, "If they say it is all right I will work it back."

And we had a little informal meeting and they said, "Al, whatever you decide to do, it will be all right with us. We will keep things quiet and there won't be nothing said about it."

And so I worked them back and there was nothing said about it. [922]

(Testimony of Albert P. Lortie.)

A. No, sir. The skipper gave me some beer after that.

Q. Oh, he did? A. Sure. [928]

Q. Tell us about that?

A. Five or six times he gave me some beer.

Q. After that? A. Sure.

Trial Examiner Myers: When you say "the skipper," you mean the captain of the boat?

A. Yes, sir. That is what we call them. Do you want me to say "captain"?

Trial Examiner Myers: It doesn't make any difference as long as we know whom you are referring to.

Q. (By Mr. Martin) Tell us about any occasions when the captain gave you any beer?

A. Well, when I was sooging around midships, working around there, around his quarters, he slipped me a can of cold beer. He gave me whiskey a couple of times too.

Q. He did? A. Sure.

Q. After this? A. Sure.

Q. After you missed the watch? A. Sure.

Q. Did he tell you not to drink it when he gave it to you? A. He gave it to me to drink.

Q. He did? A. Sure. [929]

Q. How about the beer?

A. The same thing.

Q. Is the captain a good friend of yours?

A. No friend of mine. He is a captain to me. He was all right with me. [930]

(Testimony of Albert P. Lortie.)

Cross Examination

(By Mr. Van Dusen.)

Q. Who hired you at that time, Mr. Lortie, do you remember? A. When I boarded the ship?

Q. Yes. A. The chief mate.

Q. The Chief Mate? A. Yes, sir.

Q. What was his name?

A. Mr. Carpenter.

Q. Mr. Carpenter? A. Yes, sir.

Q. Did he ask you if you were a member of the N. M. U.?

A. Yes, sir. It would take me two minutes to tell you what he told me, and it will save you some of your valuable time.

Q. All right.

A. When I boarded the ship I saw the chief mate at the galley door. And I said: "You are the chief mate?" and he said he was. And I said: "I am the new A. B."

And the Chief mate said: "Do you belong to any union?"

A. And I said: "Yes, sir, I am an N. M. U. Does that make any difference?"

And he said: "No, but I am going to tell you one thing. We don't want any discontent in the crew back here on account of the N. M. U." [951]

LEO HERMEN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Will you give your name and address to the reporter?

A. Leo Hermen. 1439 Houston Avenue, Port Arthur, Texas.

Q. (By Mr. Wright) Mr. Hermen, are you a seaman? A. Yes, sir.

Q. What licenses do you hold? What certificate?

A. An A. B.'s ticket.

Q. Are you a member of the National Maritime Union? A. No, sir.

Q. What union do you belong to?

A. I. S. U.

Q. Does that mean International Seamen's Union?

A. International Seamen's Union, yes, sir.

[1007]

Q. How long have you been a member of the International Seamen's Union?

A. Since '23; 1923.

Q. How long have you been going to sea?

A. About since 1922.

Q. Have you ever sailed on any Texas Company ships? A. Yes, sir.

Q. Can you remember what ship you first sailed on of The Texas Company?

(Testimony of Leo Hermen.)

A. The "Franklin" I believe it was in San Pedro.

Q. Can you name the date?

A. I believe I have the date here. The SS "Franklin" about 1934—1924.

Q. Have you shipped on some ships since then?

A. Yes, sir. The "Alabama".

Q. When was that?

A. About June 1, 1935.

Q. When did you get off that ship?

A. I didn't get off. I got left behind.

Q. The ship left before you got on?

A. Yes, sir.

Q. What was the next ship you were on of The Texas Company?

A. The "Dungannon." I got on her May 28, 1937, and got off July 8, 1937.

Q. Have you been on a ship of The Texas Company since then? [1008]

A. I was on the "New Jersey".

Q. When were you on her?

A. I got on there in August, 1937, and got off March 12.

Q. 1938? A. 1938.

Q. Have you been on a Texas Company ship since then? A. Yes, sir, the "Nevada".

Q. When were you on her?

A. Got on April 19, 1938, and got off May 21, 1938.

(Testimony of Leo Hermen.)

Mr. Van Dusen: I didn't get the first date. What was the first date? A. April 19.

Mr. Van Dusen: And you got off when?

A. Got off May 21, I believe.

Q. (By Mr. Wright) What job did you have on the "Nevada"? A. A. B.

Q. Do you remember where the ship was when you got on her?

A. Yes, sir. She was at the Texas dock.

Q. How come you to leave that ship on May 21?

A. I left it because they had bad water on there.

Q. Did you get sick as a result of it?

A. Yes, sir, I got sick and was sick three days.

Q. Now when you went on the steamship "Nevada" did you have a conversation with the mate?

A. Yes, sir, I had a conversation about——

[1009]

Q. (Interrupting) Now what is the mate's name? A. I don't recall what his name is.

Q. Do you remember what time it was when you talked to him?

A. Yes, sir, it was 8:00 o'clock in the morning.

Trial Examiner Myers: Will you take the exhibit and show it to the witness so that we can get the name of the mate?

Q. (By Mr. Wright) Is this the mate (handing a paper to the witness)?

A. That is it; Carl Tranberg.

Q. Is that the name of the mate, Carl Tranberg?

A. Yes, sir.

(Testimony of Leo Hermen.)

Q. That is the man with whom you had the conversation? A. Yes, sir.

Q. Will you tell us exactly what transpired in that conversation? Tell us what took place, what he said and what you said.

A. Well, I came on board about 7:00 o'clock in the morning on the "Nevada". I had an A. B.'s job. I got it from the Institute and I went into the forecastle and put my sea bag in there and I met Baldy, a fellow by the name of Rosen, over there, and as I came in there he asked me if I had a union book. I told him, "Yes, I had a union book; it all depends what kind." So I told him I was a member of the I. S. U. [1010]

Q. Is that all that was said between you and Rosen?

A. Between me and Baldy, yes, sir.

Q. Have you been in the hearing here since the first day of the hearing?

A. Here in the court room?

Q. Yes. A. No, sir.

Q. Now then after you had the conversation with Rosen did you later have a conversation with Mate Tranberg? A. Yes, sir.

Q. What happened?

A. About 8:00 o'clock in the morning.

Q. What happened in that conversation?

A. I told the mate that there was a little misunderstanding between the crew and me about not

(Testimony of Leo Hermen.)

being a member of the N. M. U. So he told me if I wanted to go to work to go and see the boatswain and turn to.

Q. Did he say anything about the union boys?

A. Yes, he said something about the union. He said, "Them boys back there are trying to get around the union, but," he says, "as far as I am concerned I don't care whether you are a union man or not. If you want to go to work, go and see the boatswain and turn to."

Q. Did he say anything about the union boys thinking that they were running the boat? [1011]

Mr. Pipkin: That is a little leading.

Trial Examiner Myers: Sustained.

Q. (By Mr. Wright) Do you remember any more conversation that took place?

A. I remember a conversation in the afternoon with the mate.

Q. This same day? A. Yes, sir.

Q. What time was that?

A. Between 12:00 and 1:00.

Q. Will you tell us what took place; what was said by the mate and by you in that conversation?

A. The mate asked me who I had the conversation back in the forecastle with. So I told him I wasn't a rat.

So he says, "I know who you had the conversation with. It was with Baldy." He says, "Baldy is a good man, but he let the union go to his head;"

(Testimony of Leo Hermen.)

and he said, "we had a boatswain on here. He done the same thing. Every time a union man comes on board he asked him if he had a union book."

Trial Examiner Myers: You mean "every time a new man comes on board"?

A. A new man, yes, sir.

Q. (By Mr. Wright) Do you know to which boatswain he was referring?

A. The fellow that was fired the trip before.

Q. Was it Mr. Buckless? [1012]

A. Mr. Buckless. That is his name.

Q. Did the mate make any comment about whether or not he liked or disliked to have a union man on board his ship? A. Yes.

Mr. Pipkin: That is a little leading, Mr. Examiner.

Trial Examiner Myers: Will you read the question again, Mr. Reporter?

(The last question was read.)

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Wright) Some time later did you have another conversation with the mate?

A. Yes, sir. Up in New Haven.

Q. Do you remember the approximate date of that conversation?

A. Well, I should say it was about nine days after I joined the ship.

(Testimony of Leo Hermen.)

Q. Can you tell us what happened during that conversation; what was said?

A. Yes. Me and the mate was working on the tanks. We was cleaning the tanks and we was talking about—he brought up Baldy. That is what he called him.

Trial Examiner Myers: You mean Rosen?

A. No, he didn't call him——

Trial Examiner Myers: No. I say do you mean Rosen when you talk about Baldy? [1013]

A. Yes. He told me that he fired Baldy on account of union activities but that is not the reason that he gave him, but he also fired the boatswain on account of union activities but the captain found another reason to fire him.

The only reason he told me that I told him I didn't belong to the N. M. U.; I belonged to the I. S. U. Otherwise he wouldn't have told me.

Q. (By Mr. Wright) Did he tell you that with respect to both Rosen and Buckless?

A. He told me that about the two of them.

Q. In other words, what you said was what he said about Rosen and Buckless?

A. Yes, sir.

Q. And the mate so stated?

A. And the mate said that, yes, sir.

Q. What did you say to him after that?

A. I don't recall what I said.

Q. Did you or not say anything to him about whether or not you would have taken the job?

(Testimony of Leo Hermen.)

A. Oh, yes. I asked him why he fired Baldy; if he fired him on account of me. So I don't know what he said right there. So I told him, "If you fired him on account of me, I wouldn't have took the job, because I got fired on too many ships for union activities."

Q. In other words, you were sympathetic toward him, were [1014] you?

A. That is right.

Q. After you got off of the "Nevada" did you register at the Seamen's Institute?

A. Yes, sir.

Q. On which list did you register?

A. On the Texas line.

Q. Do you know the approximate date when you registered?

A. I believe it was around May 22. Well, it was the day after I got off in New Orleans. It was on Monday morning. We left there Saturday.

Q. After you had registered or some time after you had registered at the Seamen's Church Institute down here did you engage in any activity in behalf of your union and the N. M. U.?

A. Yes, sir, I did.

Q. What did you do?

A. We got a petition up to take down to Mr. Hand about Mr. Meyers shipping everybody out except the Seamen's Institute.

Q. Do you remember, Mr. Herman, what that petition related to?

(Testimony of Leo Hermen.)

A. Yes, sir. It related on account of Mr. Meyers shipping out all kinds of fellows—well, anyhow, that didn't belong to the union and never went to sea before.

Q. Was there any reference made in the petition to the [1015] places where men were shipped from?

A. Yes, sir.

Q. What was that reference?

A. There was three or four different ships that the A. B.'s and quartermasters and ordinary seamen had been shipped out that never came off the Texas lists; that Mr. Meyers got them from the bar rooms.

Q. From where?

A. From the bar rooms or honky-tonk joints or whatever you call them.

Q. This petition, was it typed out into several copies?

A. Yes, sir, it was typed out in three copies and there was about thirty or forty names on them.

Q. Now, did each of the men sign the three copies? A. Yes, sir.

Q. Now then with reference to these three copies, do you know what happened to all three of them?

A. Yes, sir. I showed one copy to Mr. Meyers and another copy was sent to Mr. Roney by Mr. Baldy; Mr. Rosen. I seen him mail it and send it, but he never got an answer from it.

Q. The other copy is in the possession of your union?

(Testimony of Leo Hermen.)

A. Of the union; not of my union, but of the N. M. U. Union.

Q. Were you present when Mr. Rosen mailed the copy to Mr. Roney? [1016] A. Yes, sir.

Q. You say you personally carried the copy to Mr. Hand? A. Yes, sir, to Mr. Hand.

Trial Examiner Myers: To Mr. Hand or Mr. Meyers? A. Mr. Hand.

Q. (By Mr. Van Dusen) Now was your name on this petition?

A. Yes, sir, my name was on the petition.

Q. Was it on all three copies?

A. I believe it was on all three copies.

Q. Now do you remember who it was that drafted or who wrote the petition?

A. Who wrote that petition? I couldn't swear who it was.

Q. Did you have any part in it?

A. Yes. I told Mr. Baldy there and told a few more fellows from the union that they had been shipping them out of here right along and I had been on top of the list for three weeks and they had never given me a call.

Q. You were in favor of this and were in favor of taking some part in it? A. Yes, sir.

Q. Who went with you when you presented the petition to Mr. Hand?

A. Well, we went down there; three or four fellows and I had five fellows in the automobile; and Mr. Hand wasn't home.

(Testimony of Leo Hermen.)

Q. Did you finally carry it to him by yourself?
[1017]

A. Yes, sir. I went home and took my wife out for a while and I just happened to drive by Mr. Hand's home and saw him drive in the garage. So I took the opportunity of going in and showing him the petition. [1018]

Q. Do you know where the petition was when the people signed it? A. Up in the union hall.

Trial Examiner Myers: What union hall?

A. The N. M. U.

Q. (By Mr. Wright) Did you make any effort to get people to sign this petition?

A. I did.

Q. Did you ask people to sign it?

A. I did.

Q. Now after this petition had been drawn up and after you had mailed a copy to Mr. Roney and after you had presented a copy of it to Mr. Hand, did you have a conversation with Mr. Meyers with respect to a job? A. Yes, I did.

Q. Now then, what did you say to Mr. Meyers?

A. I asked him why he doesn't ship me out.

Q. And what did he say?

A. He told me I had better go see Mr. Roney or Mr. Meyers. I told him I didn't quite have the railroad fare to go see Mr. Roney.

Trial Examiner Myers: Who said this?

A. Mr. Meyers; Two-Gun Meyers.

(Testimony of Leo Hermen.)

Trial Examiner Myers: What other Meyers did he have reference to? [1019]

A. Oh, Mr. Hand. Mr. Hand or Mr. Roney. Mr. Meyers said that.

Q. (By Mr. Wright) Did you say anything to him about men being shipped ahead of you?

A. Yes, sir, I told him, "There are twenty or thirty fellows being shipped out and they are not being shipped out from the Seamen's Institute; that they are being shipped out from the beer joints and dance halls and the boarding house down there."

Q. Did Mr. Meyers say anything about why you hadn't been hired?

A. Yes, he told me because I took a petition over to Mr. Hand that he got orders from Mr. Hand and Mr. Roney not to ship me on account of that petition I took down there.

Q. He told you that he had orders from Hand and Roney not to ship you? A. That is right.

Q. Now at any time subsequent to that did you have any conversation with Mr. Hand about this thing?

A. Yes, I called him up and asked him why he doesn't ship me out. He told me to go and see Mr. Meyers.

Q. Did he ask you what your name was?

A. He asked me what my name was and I told him my name was on the petition there and he asked me what my name in particular was and I told him "Leo Hermen."

(Testimony of Leo Hermen.)

Q. What did he say? [1020]

A. He told me to see Mr. Meyers and he slammed the door in my face.

Q. While you were standing there talking to him?

A. While I was standing there talking to him.

Q. What did you do then?

A. The only thing I could do was to go home.

Q. Now where did this conversation take place?

A. At Mr. Meyers' house.

Q. You mean Mr. Hand's house?

A. I mean Mr. Hand's house.

Q. Is that in Port Arthur here?

A. Yes, in Port Arthur.

Q. Now still subsequent to that date did you then have another conversation with Mr. Meyers about getting a job?

A. Yes, I had a conversation with Meyers. He told me that I took that petition to Mr. Hand and he told me if it was up to him he wouldn't ship me anyhow and then he called me a few names that I guess I can't say around here.

Q. That is all right. Did he make any comment at all with respect to hiring out of the Seamen's Institute?

A. No, he didn't. I have been on the list there for four months and I haven't shipped yet.

Q. Do you remember anything else that was said in that conversation at that time when he said if he had his way he would never ship you? [1021]

(Testimony of Leo Hermen.)

A. Yes, he told me that he had orders from Mr. Hand and Mr. Roney not to ship me.

Q. Did he say anything about the captain on the "Nevada" not wanting you to go to work?

Mr. Williams: Now that is leading, your Honor. We certainly object to that question.

Trial Examiner Myers: I will sustain it.

Will you please tell us in detail just what Mr. Meyers said to you and what you said to him?

A. Mr. Meyers told me that the captain on the "Nevada" didn't want me.

So I told him, "That is not the only ship The Texas Company has got."

Q. (By Mr. Wright) What did he say then? Did he tell you he would look into it or to go on home?

A. Yes, he told me he would look into it, but he never did.

Q. Have you had a job since you had that conversation with him?

A. No, I haven't had a job with them.

Q. Did they come over and offer you a job?

A. No. They won't either.

Q. Do you know where you are on the list?

A. Right at the present time I am not on the list. I have been here for four months and they told me they won't ship me. I have been on the list for three and a half months and they [1022] say they won't ship me out. I asked Davis at the Institute and they say they got orders not to ship me

(Testimony of Leo Hermen.)

from Meyers and Meyers got his orders from Mr. Hand and Mr. Roney.

Q. How did you happen to get off the list?

A. Well, I happened to miss last Monday's call. I wasn't here. I have a family to support. I was looking for a job.

Q. Have you had any employment since you got off the "Nevada"? A. No, sir.

Q. You haven't worked anywhere ?

A. Well, I have worked about two days cutting grass for a fellow. That is all.

Q. That is all the work you have had since you got off the "Nevada"?

A. That is all I have had, except on a shrimp boat.

Q. Except on what?

A. Except on a shrimp boat.

Q. You worked on a shrimp boat?

A. Yes, sir.

Q. How much have you made working on shrimp boats?

Trial Examiner Myers: Is he one of the discharged employees?

Mr. Wright: No, sir.

Mr. Van Dusen: What was that?

Trial Examiner Myers: I don't want to hear how much he has earned. [1023]

Mr. Wright: That is all.

(Testimony of Leo Hermen.)

Cross Examination

Q. (By Mr. Van Dusen) Now, Mr. Hermen, the first time you signed up on a Texas Company ship was on the S. S. "Franklin", did you say?

A. Yes, the "Franklin".

Q. What is that?

A. Yes, sir. A stand by job in the San Pedro Dry Docks.

Q. How did you get that job, Mr. Hermen?

A. I got it through the shipping hall.

Q. What?

A. I got it through the hall where they ship in San Pedro. [1024]

Q. San Pedro, California, is that?

A. Yes, sir.

Q. Well, what Hall was that that you got it through?

A. I don't remember what the name of it is. Stevedores' Hall, I believe it is.

Q. Stevedores' Hall? A. Yes, sir.

Q. It wasn't any union hall, was it?

A. No, sir.

Q. Were you an I. S. U. member at that time?

A. Yes, sir.

Q. How long were you on that ship, Mr. Hermen?

A. I don't recall how long I was on there. It was just a stand by job.

Q. Just a short time?

A. A short time, yes.

(Testimony of Leo Hermen.)

Q. Now, I believe you said that the next ship you were on of The Texas Company was the SS "Alabama," is that right?

A. "Alabama," yes, sir.

Q. When was that?

A. Around 1935, I believe it was. It was in 1935 around July. I am not positive about the date. The Texas Company has a record of all that. I believe they can find it.

Q. Weren't you on the "Alabama" in 1933?

A. That might be so. It might have been 1933 or it might [1025] have been 1935. I don't recall the date.

Q. Do you have your discharges for that?

A. No, I never carry discharges. A mate can look at a man and tell him if he is an A. B. I never carried them.

Q. You don't keep them? A. No, sir.

Q. You haven't any of them?

A. No, sir, I haven't got a one. I don't keep them.

Q. Now, weren't you also on the SS "California" in 1930?

A. 1930? Not that I recall. I might have been on it. I have been on quite a few ships in Port Arthur.

Q. Were you ever on ships of any other company?

A. Yes, sir. The Gulf Refining Company.

Q. What is that? A. The Gulf.

(Testimony of Leo Hermen.)

Q. The Gulf Refining Company?

A. Yes, sir.

Q. Was that prior to 1930 or after?

A. Well, I was in 1930 and 1931 and 1932.

Q. Now you have been an A. B. since, you say, 1923?

A. No, sir, I haven't been an A. B. since 1923. I got my A. B.'s ticket in 1926.

Q. 1926? A. Yes, sir.

Q. And you have been on Gulf ships. Have you been on Standard [1026] of New York ships?

A. Yes, sir.

Q. Now do you recall why you left the SS "California" in 1930?

A. I don't recall ever being on the ship. I might have been on it, but I don't recall it.

Q. Do you recall why you left the SS "Alabama" in 1933? A. I was left behind.

Q. You were on shore?

A. If that was the date, I got left behind. I am sure of that.

Q. You were on shore?

A. On shore. I am a married man.

Q. You missed the ship?

A. Yes, sir. It was supposed to sail at 6:00 o'clock, but I believe she sailed at 5:00.

Q. Now, when you were hired on the SS "Alabama" where were you hired?

A. I believe it was the Seamen's Institute.

Q. On The Texas Company list?

(Testimony of Leo Hermen.)

A. It must have been on the Texas list, because they don't hire you unless you are on the list. I don't recall what list I was on.

Q. You were an I. S. U. member?

A. Yes, sir, I am still an I. S. U. member.

Q. Didn't anybody ask you if you were an I. S. U. member? [1027]

A. At that time? No, sir, not that I recall.

Q. Now, in 1937 you were on the SS "Dungan-non"? A. Yes, sir.

Q. How were you hired on that ship?

A. I was hired by Mr. Meyers; Two Gun Meyers.

Q. Through the Institute here?

A. No, through Mr. Meyers.

Q. Well, how did he get in touch with you?

A. Oh, he can find me down at the house and he asked my wife where I was working at and he got me.

Q. Does he have a list of his own?

A. Yes, he has quite a good list of his own.

Q. He has?

A. A good one. He has pages of them.

Q. And he gets men off that list?

A. Yes, sir. If you have ten dollars or fifteen dollars you can get a job at any time.

Trial Examiner Myers: Did you ever give him any money? A. No, sir.

Q. (By Mr. Van Dusen) Did you ever pay him for a job?

A. No, sir, I wouldn't pay that—

(Testimony of Leo Hermen.)

Q. Did you ever see anybody pay him for a job?

A. No, sir, but I can bring witnesses up to show that they give ten dollars for a job; not to Meyers, but to the beer joint. [1028]

Q. Oh, to the beer joint?

A. Yes. Meyers is pretty smart. He wouldn't take the money himself. He has brains.

Q. But you never paid him?

A. No, sir. The only thing I would pay him with is nothing.

Q. Now, he gets men from this list of his own and he gets them from the Institute?

A. Very seldom he gets them from the Institute. Only when he can't get his own friends.

Q. Please answer my questions so that we can shorten this examination. I just want to know what you know of your own knowledge.

A. I am talking about what I know.

Q. I am asking you this: He gets men from his own list and he also gets some from the Institute?

A. Very few from the Institute.

Q. But he gets some?

A. You can count them on your hand.

Q. Well, he gets some, doesn't he?

A. Yes, sir.

Q. You got on the "Alabama" through the Institute?

A. I believe I got on the "Alabama" through the Institute. I don't recall.

(Testimony of Leo Hermen.)

Q. You don't know if he gets men any other place, do you?

A. Yes, sir, I do. He gets them at the Rainbow Inn. He gets [1029] them at Old Lady Mitchal's. He gets them at Procter Street, Blume's place. There is a half dozen more places that I don't recall what the name is, but I could show you.

Q. So when he gets a man at a particular time, you don't know whether he is getting him from his own list, from the Seamen's Institute list, or from these other places that you have mentioned?

A. Why not?

Q. I say at any particular given time you don't know just where he gets the men?

A. No, not at that particular time.

Q. So you don't know whether he is first in line or not?

A. Oh, yes. You can always ask a fellow what he is on the list.

Q. You ask every man that is hired by The Texas Company what his place is on The Texas Company list?

A. I can see. I am at the Institute all the time.

Q. But you don't know about these other places?

A. No, because I don't go to these places and pay ten dollars for a job.

Q. Then you don't know who is first on his private list? A. No, sir.

Trial Examiner Myers: But you do know who is first on the Seamen's Institute list?

(Testimony of Leo Hermen.)

A. Yes, sir. [1030]

Q. (By Mr. Van Dusen) But you don't know whether the man whom he hires is first on his private list, do you? A. No.

Q. Why did you leave the "Dungannon"?

A. Because the mate wanted me to work day work and I didn't want to and according to the Marine Law all hands is supposed to be on watch.

Q. Did you quit? A. Yes, sir.

Q. Or were you fired? A. I quit.

Q. Were you with any other Texas Company ship? A. Yes, sir, the "New Jersey".

Q. That was about a month later?

A. Yes, sir.

Q. You were not on any other ship in that intervening time?

A. No, sir, not on any other ship in that intervening time.

Q. Who hired you on the "New Jersey"?

A. I got the job through the Institute.

Q. Through the Institute? A. Yes, sir.

Q. Were you on The Texas Company list or the open list? A. The Texas list.

Q. Were you ever on the open list?

A. No, sir. [1031]

Q. Who called you for the job on the "New Jersey"? A. Mr. Davis called me.

Q. Mr. Davis? A. Yes, sir.

Q. Is he over at the Institute? A. Yes, sir.

Q. What did he say?

(Testimony of Leo Hermen.)

A. He asked me if I wanted a job on the "New Jersey" and I said "Yes".

Q. Did he ask you if you were an I. S. U. member?

A. No, he didn't ask me nothing about that.

Q. Did you report? To whom did you report?

A. I reported to the mate. I believe Newtonson is his name.

Q. What is his name?

A. Newtonson I think is his name.

Q. Newtonson?

A. I believe that is his name.

Q. How long were you on the "New Jersey", Mr. Hermen?

A. I believe I got on on August 19, 1937, to March 12, 1938.

Q. Why did you leave the "New Jersey"?

A. Because the mate was trying to cheat me out of some overtime.

Q. He was what?

A. He was trying to cheat me out of eight hours overtime.

Q. The mate was? [1032] A. Yes, sir.

Q. Did you complain to the captain?

A. Yes, I told the captain about it. I got it after that.

Q. You got your overtime?

A. Yes, sir, after talking about it.

Q. What did you do? Did you leave the ship then? A. Yes, sir.

(Testimony of Leo Hermen.)

Q. Just because of that argument?

A. That is enough.

Q. You left voluntarily?

A. Voluntarily, yes.

Q. Did you get a job on any other ship?

A. No, sir.

Q. On leaving the "New Jersey"?

A. No, sir. The next job was the "Nevada".

Q. Did you register over at the Seamen's Church Institute when you left the "New Jersey"?

A. Yes, sir.

Q. Who called you for the job on the "Nevada"?

A. On the "Nevada"?

Q. Yes. A. Mr. Davis called me.

Q. Mr. Davis over at the Institute?

A. Yes, sir.

Q. Did he ask you if you were a union member at that time? A. No, sir, he didn't. [1033]

Q. How long were you on the "Nevada"?

A. I went on on April 19, 1938, to May 21, 1938; somewhere around thirty-five or forty days.

Q. Now, you said, I believe that you left the "Nevada" because of——

A. (Interrupting) Bad water.

Q. You got sick?

A. I got sick for three days before we got into New Orleans.

Q. So you left that ship of your own accord?

A. I did.

Q. Now, during the period that you were a mem-

(Testimony of Leo Hermen.)

ber of the I. S. U. did the I. S. U. ever have a hiring hall? A. Yes, sir.

Q. How long ago did they have one?

A. They had one on Houston Avenue in about the 500 block.

Q. What is that?

A. On Houston Avenue in the 500 block.

Q. How long has that been in existence? How long was it in existence?

A. Oh, ever since they have been here in Port Arthur.

Q. Since 1923, would you say?

A. I don't know. I don't recall if they had it that long.

Q. Anyway a number of years?

A. Yes, sir.

Q. Is it closed up now? [1034]

A. I don't remember. I haven't been going up there.

Q. Have you during this period registered at the I. S. U. Hall? A. Yes, sir, I did.

Q. Have you got any jobs through the I. S. U. Hall? A. No.

Q. What companies get men through the I. S. U. Hall, if you know?

A. Well, before the strike they had all kinds of companies getting it.

Q. What is that?

A. Before the strike everybody was shipping through the I. S. U. Hall.

(Testimony of Leo Hermen.)

Q. When was the strike? 1936, was it?

A. That last strike they had here.

Q. 1936? A. Yes, the last strike.

Q. You mean they were all shipping through there except those that went to the N. M. U. Hall?

A. No. There was no N. M. U. Hall then.

Q. Could you get on a Texas Company ship through the I. S. U. Hall? A. At that time?

Q. Then or any time? A. I don't know.

[1035]

Q. You never heard of any men getting any jobs on Texas Company ships? A. I don't know.

Q. Well, you know a lot about the Institute?

A. I ought to know.

Q. Well, you were a member of the I. S. U., weren't you? Were you ever over at their hall?

A. Yes, but I never asked questions over there.

Q. You were not interested in the I. S. U.?

A. No, I was interested in the I. S. U., but I wasn't interested in shipping on any ships but The Texas Company and the Gulf.

Q. Even though they had bad food?

A. Yes, they have quite a lot of bad food.

Q. Did you leave one ship on account of bad food? A. Did I say so?

Q. Well, bad water.

A. Well, why don't you say so.

Q. You left one ship on account of bad water?

A. Yes, sir.

Q. And you left one ship on account of overtime?

(Testimony of Leo Hermen.)

A. Yes, sir.

Q. Still they are nice ships, aren't they, and you want to work on them, don't you?

A. Well, I am a maritime man. I am not going to work on a [1036] ship when they try to cheat me out of \$5.00.

Q. Why do you go back to The Texas Company?

A. Do you want to know why?

Q. Yes.

A. Why does a man go back to his trade? Why does a man want to work at his trade? Because The Texas Company ships come here and I am a married man and live here.

Q. Why didn't you try to get a job from the I. S. U. Hall?

A. Because they don't ship as many as the Institute.

Q. They ship some?

A. Yes, if Mr. Meyers doesn't get hold of a man first.

Q. Who? The I. S. U. Hall?

A. No, the men he has around here.

Q. It is possible to get a job over at the I. S. U. Hall?

A. It is possible.

Q. But you haven't registered?

A. I haven't registered, no.

Q. So all you are interested in is getting a job on Texas Company ships?

A. Yes, sir.

Q. Even though you don't like the water and don't like the arguments?

(Testimony of Leo Hermen.)

A. There is lots of things you don't like.

Q. Now, Mr. Hermen, you filed charges against The Texas Company, didn't you? [1037]

A. I did. I believe I did.

Q. When did you do that?

A. After I got off the "Nevada". [1038]

Q. With whom did you file those charges?

A. I seen Mr. Rosen first and he took me up to a law.

Q. He took you where?

A. I seen Mr. Rosen first and he took me up to a lawyer by the Goodhue Hotel.

Q. What lawyer?

A. I don't recall his name.

Q. Name the lawyer. What is his name?

A. What is his name, Rosen?

Q. Was it Mr. Wright?

A. What is his name, Rosen?

Trial Examiner Myers: Never mind. If you don't know the name, say so.

A. I don't recall the name.

Mr. Martin: We are willing to stipulate, Mr. Examiner—

Mr. Van Dusen: I would rather ask him.

Q. (By Mr. Van Dusen) How is it that you didn't file charges through the I. S. U.?

A. Because members of the crew was all N. M. U. men except me. I was the only I. S. U. man on there.

Q. You haven't joined the N. M. U., have you?

(Testimony of Leo Hermen.)

A. No.

Q. Do you plan to? A. Yes.

Q. In the near future? [1039] A. Yes.

Q. Did they tell you you had any basis for charges against The Texas Company?

A. Who?

Q. The man with whom you filed the charges.

A. I believe he said I did have some.

Q. What did you charge? What was your charge?

Mr. Martin: Mr. Examiner, the best evidence of all this concerning Mr. Hermen's relationship with the Board or any charges filed with the Board would be the records kept by the Board.

Trial Examiner Myers: Well, I don't know what this has to do with the case at all.

Mr. Martin: For that reason I move to strike out everything said on that subject.

Mr. Van Dusen: Just a minute. This all goes to this man's credibility. I think I can assume that he knows of his own knowledge what was in those charges. He has testified about petitions and so on.

Trial Examiner Myers: I am not bothered by that objection, but I would like to know what this has to do with this hearing.

Mr. Van Dusen: The man's credibility.

Trial Examiner Myers: Oh, that is nothing.

Mr. Van Dusen: Just a minute. He said he left the [1040] "Nevada" because he didn't like the

(Testimony of Leo Hermen.)

water. Is that a basis for a charge against The Texas Company?

Trial Examiner Myers: Were you served with any complaint?

Mr. Van Dusen: I can produce correspondence from the Labor Board naming Mr. Hermen. I don't think Mr. Martin will deny that.

Trial Examiner Myers: Well, go ahead.

Mr. Martin: Was any charge ever issued?

Trial Examiner Myers: Come on now.

Mr. Van Dusen: Read the question, please.

(The last question was read.)

Mr. Martin: Mr. Examiner, there is a motion before you. I moved to strike it out.

Trial Examiner Myers: I will overrule it.

Q. (By Mr. Van Dusen) What was your charge against The Texas Company?

A. Well, at first I was going——

Mr. Wright: Mr. Examiner, I want to object to this question for the reason that it assumes there was a charge.

Mr. Van Dusen: He admitted it before.

The Witness: I didn't admit nothing.

Trial Examiner Myers: I will overrule it. Please proceed.

Mr. Wright: You overrule my objection, sir?

[1041]

Trial Examiner Myers: Yes.

Mr. Van Dusen: Read the last question.

(The last question was read.)

(Testimony of Leo Hermen.)

Trial Examiner Myers: You went to a lawyer and you told the lawyer what? What did you tell to your lawyer?

A. I was going to find out why that The Texas Company doesn't clean their tanks and have better water than they did have. I was sick for three days and I didn't get nothing out of it.

Trial Examiner Myers: Is that the charge that you filed with your lawyer?

A. I was going to. He said I didn't have a case.

Trial Examiner Myers: And that was the end of it? A. And that was the end of it.

Trial Examiner Myers: And you never heard nothing more about it since then?

A. About the water?

Trial Examiner Myers: No, about the charges, the complaint against The Texas Company.

A. No, not about that.

Mr. Wright: May I ask one question?

Trial Examiner Myers: No more interrupting now if you please. If you have an objection to make, that is all right.

Q. (By Mr. Van Dusen) Did you tell him you wanted your job back and wanted back wages?

A. No, I didn't. [1042]

Q. What? A. No, sir.

Q. This talk of yours was with the Labor Board Examiner, was it, or with a Labor Board Investigator? A. About the water?

(Testimony of Leo Hermen.)

Q. Well, when you filed your charges.

A. No, that was a lawyer of my own.

Q. I thought you said Mr. Rosen took you to him?

A. That is when I went to the Goodhue Hotel. No. When I went to the Goodhue Hotel I just went to help Mr. Rosen about the statement that the mate said on the "Nevada".

Q. You helped him prepare his statement?

A. I didn't help him prepare his statement. I just give him what the mate told me about Mr. Rosen and the boatswain and why he fired them.

Q. Now you went to your own lawyer, you said?

A. Yes.

Q. And filed charges? A. Yes.

Q. Who was the lawyer? A. I don't know.

Mr. Wright: Now, Mr. Examiner, the testimony shows that this man went to two different people for two different purposes. One of them was on a case of his own with reference to The Texas Company and the other was at the Goodhue [1043] Hotel, and I submit that whether this man had or had not a case against The Texas Company for illness on account of bad water has nothing to do with this case and I want to object to it for that reason.

Mr. Van Dusen: I will connect it up.

Trial Examiner Myers: Objection overruled and if he doesn't connect it up I will entertain a motion to strike.

(Testimony of Leo Hermen.)

Mr. Van Dusen: I will connect it up now by asking Mr. Martin to concede that the Labor Board notified The Texas Company that charges had been filed by Mr. Hermen for violation of the Labor Act.

Mr. Wright: Are you objecting because he didn't pursue them?

Trial Examiner Myers: Mr. Van Dusen, will you please go ahead with the examination?

Q. (By Mr. Van Dusen) To what lawyer did you go, please? A. I don't know.

Q. You don't know his name?

A. No. That has not got nothing to do with the case, like you say so. I don't know.

Q. Please just answer my questions.

A. I am answering your questions. [1044]

Q. You left the "Nevada" on May 21, 1938, a couple of months ago?

A. It is more than a couple of months ago already.

Q. How many months would you say it is?

A. Well, it is since May.

Q. How many months?

A. A little over three months or so.

Q. You thought you had a charge against The Texas Company and you went to some lawyer and you don't know his name? A. No.

Q. You don't remember his name? A. No.

Q. You don't want to remember it?

A. No. I say I don't know. I didn't say I didn't want to remember it. I forget it.

(Testimony of Leo Hermen.)

Q. Weren't charges filed with the Labor Board?

A. I told him on account of the bad water. He wanted to know why I quit and I said on account of the bad water.

Q. Were charges filed with the Labor Board?

A. Yes, I believe so.

Q. You later withdrew those charges, didn't you?

A. I didn't withdraw nothing that I know of.

Q. What?

A. I didn't withdraw nothing that I know of.

Q. You didn't withdraw anything? [1045]

A. Not that I know of.

Q. You think they are still pending?

A. I don't know.

Mr. Wright: Mr. Examiner, again I have objection. I want to object to the immateriality of the questions. I suggest again that the best evidence of what was done with the Board is the Board's own records, and I think it is obvious, even to Mr. Van Dusen, that the witness is confused over the word "charge". He is confusing the word "charge" with his own case as distinguished from the charge before the Board.

Trial Examiner Myers: Are there any charges pending on behalf of Mr. Hermen?

Mr. Martin: Are there now?

Trial Examiner Myers: Yes, sir.

Mr. Martin: No, sir.

Trial Examiner Myers: Were there ever any?

Mr. Martin: There may have been. I will have

(Testimony of Leo Hermen.)
to go through the file carefully.

Mr. Van Dusen: I can show Mr. Martin in just a minute.

(Discussion off the record.)

Mr. Van Dusen: Well, will you concede for the record that charges were filed with the Labor Board on behalf of Leo Hermen?

(Discussion off the record.)

Mr. Van Dusen: I would just as soon have Mr. Martin put [1046] in the record, as Mr. Davis did, what his file shows. Then it will be clear.

Mr. Martin: Let the record show that there is contained in the file of the Sixteenth Region of the National Labor Relations Board an affidavit signed "Leo Hermen" and subscribed and sworn to in front of John F. Lebus, Field Examiner for the Sixteenth Regional office of the Labor Board, and dated May 25, 1938.

Let the record show furthermore that there is in the file an amended charge, stamped received August 6, 1938, by the Sixteenth Regional office of the Labor Board, dated August 1, 1938, Jefferson County, Texas, in which amended charge appears the name of Leo Hermen, an able-bodied seaman, who is alleged to have been discharged from the S.S. "Nevada" on or about May 22, 1938.

Mr. Van Dusen: Is there anything your file shows with reference to the withdrawal?

Mr. Martin: That is not the charge, however, upon which the complaint is based. I find no evi-

(Testimony of Leo Hermen.)

dence in the file that this charge was ever served upon the company.

Mr. Van Dusen: Is there anything in there indicating withdrawal of the charge?

Trial Examiner Myers: Well, evidently after the charge was filed the Labor Board didn't think that Hermen had a good case. [1047]

Mr. Van Dusen: They did when they wrote me.

Trial Examiner Myers: They just said that the charge had been filed. They didn't file the charges. They notified you that the charge had been filed.

Q. (By Mr. Van Dusen) Now, Mr. Hermen, do you remember talking to Field Examiner Lebus and signing an affidavit for him on or about May 25?

A. I remember signing one affidavit.

Q. What is that?

A. I remember signing one affidavit. I don't know what date it was, though.

Q. You remember signing an affidavit?

A. I remember signing something, but I don't remember what date it was.

Q. You told him what to put in it, didn't you? You told Mr. Lebus what to put in it?

A. He asked me questions and I told him just exactly how it was.

Q. You claimed you were discharged?

A. Discharged on the what?

Q. Discharged from the "Nevada"?

A. I quit.

(Testimony of Leo Hermen.)

Q. I said when you talked to Mr. Lebus you claimed you were discharged, did you not? When you talked to Mr. Lebus you made out this statement and you claimed you were discharged? [1048]

A. Well, "discharged" and "quit" is the same thing, isn't it?

Q. You claimed you were fired?

A. I didn't claim I was fired.

Q. You are sure of that?

A. I am sure of that.

Q. Now you signed an affidavit, didn't you?

A. I believe I signed an affidavit.

Q. And you now state that you didn't claim that you were fired from the "Nevada"?

A. I never was fired from the "Nevada".

Q. I am asking you what you told Mr. Lebus?

A. I don't recall it.

Q. Well, this is important. You want a job, don't you? A. I don't recall it.

Q. What is that?

A. I don't recall what I said.

Q. You mean you don't want to recall?

A. I says, "I don't recall."

Q. Now isn't it a fact that you filed these charges through the N. M. U.?

Mr. Wright: That is the only place you can file them.

Q. (By Mr. Van Dusen) Isn't that right?

A. Yes.

Q. You didn't file them through the I. S. U.?

[1049]

(Testimony of Leo Hermen.)

A. No.

Q. Have you been an active member of the I. S. U.? A. What?

Q. Are you an active member of the I. S. U.?

A. Yes, I am.

Q. Are your dues paid up?

A. No, not paid up.

Q. When did you last stop paying dues?

Mr. Wright: I object for the reason that the question is irrelevant and immaterial.

Mr. Van Dusen: No. I am trying to test out his membership.

Q. (By Mr. Van Dusen) When?

A. About eight months ago.

Q. Then you were not an active member of the I. S. U. when you filed your charges?

A. Why not? When you have your book and you are too far behind and you can't pay your debts up, you can't pay them.

Q. Are you pledged to the N. M. U. now?

A. What?

Q. Are you pledged to the N. M. U. now?

A. Explain yourself. I don't know what you are talking about.

Q. Well, you have decided to join the N. M. U.?

A. I will. I have intention to. [1050]

Q. When did you decide to join the N. M. U.?

A. After I seen what happened to Mr. Baldy.

Q. You decided when you were on the "Nevada", didn't you? A. Yes.

(Testimony of Leo Hermen.)

Q. Did you talk to Mr. Buckless or Mr. Rosen about their cases?

A. I had conversations with them.

Q. They asked you to testify, didn't they?

A. They didn't ask me. I done it on my free will.

Q. How did you know they had charges filed?

A. When a man gets fired on a ship for union activity, why shouldn't he have a case against them?

Q. I said how did you know?

A. Oh, well, anybody could find that out.

Q. Oh, you went around finding out?

A. No, I didn't. Somebody told me.

Q. Who told you?

A. I don't recall his name.

Q. Your memory is very poor on some of these things, isn't it?

A. Oh, he is here somewhere. I heard it here in Port Arthur when I came back.

Q. You were friendly with Buckless and Rosen on board the ship? You were very friendly with Buckless and Rosen on board the ship? [1051]

A. I couldn't be friendly with Rosen, because he got fired at 12:00 o'clock or 1:00 o'clock. How could I be friendly?

Q. When were you on the ship for the first time?

A. Rosen was fired the same day I got on the ship. I came on the ship at 8:00 o'clock and Rosen was fired at twelve or one o'clock. I don't remem-

(Testimony of Leo Hermen.)

ber when he got fired. I was over the side painting.

Q. Had you known him before you went on the "Nevada"? A. Never laid eyes on him before.

Q. You just met him that one time?

A. Yes, sir.

Q. And then you met him again after you left the "Nevada", is that right?

A. Yes, I seen him here in Port Arthur.

Q. Are you on the N. M. U. list for a job?

A. No, sir, I don't belong to the union. You can't ship out of there unless you belong to the union.

Q. Do you go over there frequently?

A. Sometimes I go up there, yes.

Q. You are friendly with the boys over there, aren't you? A. Sir?

Q. I say you are friendly with the boys over there?

A. They don't stop me from going up there and seeing somebody if I want to.

Q. Do you know Mr. Zinkiewicz? [1052]

A. No, I don't. I don't know nobody by name.

Q. Did you tell Mr. Lebus that you quit the "Nevada" because of bad water? A. Yes.

Q. That is what you told him?

A. That I quit on account of bad water.

Q. You told him that was the only reason why you left the ship? A. Yes.

Q. That is all you told him? Are you sure of

(Testimony of Leo Hermen.)

that? A. That is all I recall.

Q. That is all you put in the affidavit?

A. I don't remember what I put in the affidavit.

Q. What is that?

A. I says, "I don't remember what I put in the affidavit." I don't remember what I put in it right now. You ask me questions and I give you the answer. That is what I said; on account of bad water, and that is what it is.

Q. Do you think you put anything else in the affidavit?

A. I don't know. I have to see the affidavit first.

Mr. Van Dusen: Does the Labor Board mind showing Mr. Hermen the affidavit?

Mr. Wright: We don't mind, but it is an awful waste of time.

Mr. Martin: We will be very glad to stipulate what he [1053] said in that affidavit.

Mr. Van Dusen: I just want to know what he said on that subject.

(Discussion off the record.)

Trial Examiner Myers: Well, we will recess now to a quarter to two.

(Thereupon, a recess was taken until 1:45 o'clock p. m.) [1054]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 o'clock p. m.)

Trial Examiner Myers: Proceed with your examination.

(Testimony of Leo Hermen.)

LEO HERMEN

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Q. (By Mr. Van Dusen) Now, Mr. Hermen, you said that when you boarded the "Nevada" on April 19, you had a talk with Chief Mate Tranberg, is that correct? A. Yes, sir.

Q. On what part of the ship was that?

A. Amidships.

Q. Was anybody present, anybody there?

A. Yes, sir, the quartermaster.

Q. Who was the quartermaster?

A. Hart. I believe that is his name.

Q. Hart? A. George Hart, yes, sir.

Q. Anyone else?

A. No, sir, there was no one.

Q. No one else there? A. No, sir.

Q. You told him you were a member of the I. S. U., didn't you? [1055] A. Yes, sir, I did.

Q. And he said he didn't care whether you were a union man or not, didn't he? A. Yes.

Q. Was that all that happened at that particular time?

A. No. I went up to the mate, and I told him there was a little misunderstanding.

Q. What is that?

A. I told the mate there was a little misunderstanding between me and the crew.

(Testimony of Leo Hermen.)

Q. At that particular time?

A. At that particular time.

Q. Just when you had gotten on board?

A. No, before I got on board, when I talked to the mate there.

Q. How long had you been on board——

A. About twenty minutes before I went to the mate.

Q. Twenty minutes? A. Yes, sir.

Q. And before you went to the mate you had a misunderstanding with the crew? A. Yes, sir.

Q. With whom did you have the misunderstanding? A. Baldy.

Q. Who? [1056] A. Mr. Rosen, Baldy.

Q. He was leaving?

A. That was about 7:30 in the morning when that came up.

Q. When did he leave?

A. In the afternoon. He got fired.

Q. When you saw him in the morning did he tell you he was leaving that day? A. No, sir.

Q. He did not? A. No, sir.

Q. When did he first tell you that he was leaving?

A. He didn't tell me. I didn't know it until that afternoon.

Q. What was your misunderstanding with Baldy?

A. Because I was not a member of the N. M. U.

Q. Did he ask you for your card, book?

(Testimony of Leo Hermen.)

A. Yes, he asked me if I was a member of the N. M. U.

Q. What did you say?

A. I told him "no", that I was a member of the I. S. U.

Q. What did he say?

A. He said: "We would like to have all N. M. U. men on this ship."

Q. What did you say to that?

A. I didn't say nothing, myself.

Q. You didn't say anything? A. No, sir.

[1057]

Q. You then decided to go to the mate?

A. Yes, sir.

Q. Did you have a misunderstanding with anybody else? A. No, sir.

Trial Examiner Myers: Did you go to the mate, or did the mate come to you?

A. No, I went to the mate.

Q. You went to the mate? A. Yes, sir.

Q. Now, it was then that the mate told you he didn't care whether you were a union man or not?

A. Yes, sir.

Q. Well, what else did you say to the mate?

A. I just told him there was a misunderstanding between me and the crew about going to work, and he told me if I wanted the job to turn to with the boatswain; that he didn't give a damn if I was a union man or not.

Q. Did you leave then?

(Testimony of Leo Hermen.)

A. I went and turned to with the boatswain.

Q. That is all that was said?

A. That is all that was said at the present moment.

Q. Who was boatswain on that particular trip?

A. A fellow by the name of Swanson, the same name the captain had.

Q. He was your immediate superior? [1058]

A. He was boatswain on there.

Q. In charge of the A. B.'s? A. Yes, sir.

Q. Now, I believe you said you saw the mate again somewhere between 12:00 and 1:00?

A. Yes, sir.

Q. Where did you see him then?

A. In the gangway.

Q. At the gangway? A. Yes, sir.

Q. How did you happen to see him there? Did you go for him? A. I went there to telephone.

Q. How is that?

A. I went there to telephone.

Q. You went there to telephone?

A. Yes, sir.

Q. So just as you were going through? Was it just as you were going or coming back?

A. No, coming back.

Q. When you were coming back?

A. Yes, sir.

Q. Did you speak to the mate first?

A. No, the mate called me over there as I went by.

(Testimony of Leo Hermen.)

Q. He called you over? [1059] A. Yes, sir.

Q. Who was present? A. Just the mate.

Q. Anyone else? A. No, sir.

Q. Anyone nearby? A. I don't know, sir.

Q. What?

A. I don't remember. I don't think there was anybody nearby.

Q. What did he say?

A. He asked me who I had talked with this morning in the forecastle.

Q. What?

A. He asked me who I was talking to in the morning about being a member of the union.

Q. What did you tell him?

A. I told him I was not ratting. That is all.

Q. You were not what?

A. I was not ratting. He asked me who was the fellow that asked me in the forecastle about my union card, and I told him I was not ratting, that was all.

Q. So you wouldn't tell him?

A. I wouldn't tell him, no.

Q. Was that all that was said? [1060]

A. No. He told me: "I know who was the cause of it. It was Baldy." So then he told me Baldy was a good union man, but let union go to his head.

Q. Was that all he said?

A. That is all I can remember.

Q. Had you seen Baldy between early morning and this time? A. No, sir.

(Testimony of Leo Hermen.)

Q. Hadn't seen him at all? A. No, sir.

Q. Didn't know whether he was on the ship or not? A. He was on the ship.

Q. Did you see him leave?

A. I didn't see him leave, no.

Q. Didn't speak to him again?

A. I didn't speak to him, no, sir.

Q. Did you see Mr. Buckless on the ship?

A. No, sir.

Q. Did you know him then? A. No, sir.

Q. You know him now? A. Yes, sir.

Q. Met him through Mr. Rosen?

A. Yes, sir.

Q. When did you meet him the first time?

A. After I came from New Orleans; after I got the ship. [1061]

Q. After you got the ship? A. Yes, sir.

Q. Now, I think you said that the mate said something to you about Buckless. Was that the same time?

A. No, sir. That was at New Haven.

Q. Where? A. New Haven.

Q. About when was that?

A. About nine days later.

Q. About nine days later? A. Yes, sir.

Q. Had you been to speak to the mate at that time?

A. When cleaning tanks I just asked him why he fired Baldy. Well, he first told me he fired Baldy for union activities; and then he said you can't fire

(Testimony of Leo Hermen.)

a man for union activity; and he found another reason for it.

Q. But you asked him about Baldy, why he had fired Baldy?

A. Yes, sir, I asked him about it. [1062]

Q. Well, you hadn't known Baldy prior to that trip, had you?

A. No, I hadn't known him only the day I came on board.

Q. Yet you were interested in knowing why he was fired? A. Sure.

Q. Did you ask him about Buckless?

A. No. He brought that conversation up himself.

Q. What did he say?

A. He said Buckless was a good man, but he let union go to his head; he was fired for union activity, but that is not the reason the captain gave.

Q. Now was anybody present at the time you had that talk with the mate?

A. No, sir. There was some man working on the shore, but he was too far away to hear the conversation.

Q. No one from the ship was there?

A. No, sir. They were on deck working, but they didn't hear the conversation.

Q. I see. Now, by the way, are you a member of the rank and file of the I. S. U.?

A. I am a member of the I. S. U.

(Testimony of Leo Hermen.)

Q. I mean the rank and file group that broke away from the I. S. U. Do you know what the rank and file group is? A. No, sir.

Q. You don't know what it is?

A. I belong to the I. S. U. [1063]

Q. You know what the rank and file is, the group that broke away from the I. S. U.? A. Yes.

Q. Were you a member of that group?

A. I couldn't be.

Q. Still with the I. S. U.?

A. I couldn't be.

Q. You said you had not paid any dues for eight months?

A. You are still a member, regardless.

Q. Are you a member of the rank and file group that broke away from the I. S. U.?

A. The way you put it, I couldn't be a member, if I hadn't paid up the dues.

Q. Do you know what the rank and file is?

A. No.

Q. Never heard of it?

A. Yes, I have heard of it.

Q. Have no idea what it is?

A. No, I don't know.

Q. No idea at all? A. No.

Q. You were not very much interested in the I. S. U., were you?

A. To a certain extent I was, yes.

Q. You don't pay dues, and don't know what the rank and file [1064] is?

(Testimony of Leo Hermen.)

A. I have been out of work for a long time. I haven't got the money to pay for it.

Q. You were more interested in joining the N. M. U., weren't you?

A. No, not until I found out Rosen got fired for union activity.

Q. Then you wanted to join the N. M. U., is that it? A. Yes, sir.

Q. Why?

A. Because I got fired too many times myself for the same reason.

Q. You just sympathized with him then. You mean you had been fired for union activity?

A. Not exactly fired. The mate told me I was discharged, that is all. That is all the reason they gave me.

Q. You thought it was for union activity?

A. Sure.

Q. When were you fired for union activity?

A. They told me my services were no longer required.

Q. When did they tell you your services were no longer required? A. About four years ago.

Q. By whom?

A. By the captain on the "Gulfpride". [1065]

Q. The "Gulfpride"? A. Yes, sir.

Q. Gulf boat? A. Gulf boat.

Q. About four years ago?

A. About four years ago.

Q. How many years?

(Testimony of Leo Hermen.)

A. About four years ago.

Q. Were you active in union activities at that time?

A. Well, we were discussing bad eats. There were bad eats on there, and the mattresses.

Q. And what did you do about that?

A. We just went up to the mate, and the captain asked him if we couldn't get better eats and better mattresses on the boat.

Q. And what did he do?

A. He didn't do nothing. He told me I might as well pack up and go ashore.

Q. You think it was because you made that complaint? A. Sure.

Q. Were you ever fired before for union activities?

A. No, not that I know of; not fired, no, just discharged, that is all.

Q. So far as you were concerned, Tranberg told you it was all right for you to stay there? [1066]

A. Yes, he told me it was all right for me to stay there.

Q. Now you say that after you left the "Nevada" at New Orleans because you were sick you then registered at the Seamen's Institute?

A. Yes, sir.

Q. At Port Arthur? A. Yes, sir.

Q. How long were you at New Orleans? Did you go to the hospital? A. No, sir.

Q. How long were you there?

(Testimony of Leo Hermen.)

A. Until 9:00 o'clock that night.

Q. I believe you went to Port Arthur?

A. Yes, sir.

Q. You left the "Nevada" at New Orleans about May 21?

A. Yes, sir.

Q. About May 21?

A. Yes, sir.

Q. I believe you testified when Mr. Wright was examining you that about May 22 or shortly thereafter you and some others prepared a petition?

A. Yes, sir.

Q. How long after you left the ship was that prepared?

A. About June 21, I believe.

Q. When was that? [1067]

A. About June 21.

Q. About a month later?

A. About a month, yes, sir.

Q. Whose idea was the petition; was it your idea?

A. It was the idea of the non-union men, the union men, the I. S. U. men and the N. M. U. men.

Q. Who started the idea?

A. Well, there was a lot of talk around there. Who started it, I don't know.

Q. Around where?

A. About Mr. Watt Meyers.

Q. Where was the talk?

A. In the Institute.

Q. Over at the Institute?

A. Yes, sir.

Q. Talking while they were over there?

A. Yes, sir.

(Testimony of Leo Hermen.)

Q. Non-union men? A. Yes, sir.

Q. I. S. U. men? A. Yes, sir.

Q. N. M. U. men A. Yes, sir.

Q. All talking about it?

A. Yes, sir. [1068]

Q. Who suggested a petition?

A. I believe I did.

Q. You did? A. Yes, sir.

Q. Did you draft it?

A. No. Mr. Buckless wrote it up.

Q. Mr. Buckless? A. Yes, sir.

Q. Mr. Rosen helped him? A. Yes, sir.

Q. Where was it prepared, over at the N. M. U. Hall? A. Yes, sir.

Q. Did other I. S. U. men sign it in addition to you?

A. A lot of the I. S. U. men signed it.

Q. How many?

A. I don't remember how many signed it.

Q. What is that?

A. I didn't ask them at the time they signed it what they were.

Q. There were some of them?

A. There were some of them, yes, sir.

Q. There were some non-union men?

A. Yes, sir.

Q. Men that were N. M. U. men, is that so?

A. Yes, sir. [1069]

Q. How many?

A. Well, it was about 50-50.

(Testimony of Leo Hermen.)

Q. What is that?

A. It was about 50-50.

Q. And you complained about The Texas Company hiring men through the Seamen's Institute?

A. Yes, sir.

Q. You were always able to get a job through the Seamen's Institute, weren't you?

A. Well, yes, sir, before.

Q. Well, you had only been out a month, hadn't you?

A. Yes, sir, but they shipped men from behind me.

Q. Were there not a lot of men on the beach?

A. Yes, there were a lot of men on the beach.

Q. You didn't expect to be hired right away?

A. No, but there were other people shipping out, and we were on top of the list and not being shipped out.

Q. You told me this morning that Mr. Meyer had his own list? A. Yes, sir.

Q. Isn't it possible that these men were ahead of these other men on the Seamen's list?

A. It could be possible.

Q. You don't know who was first on Mr. Meyer's list, do you? A. No.

Q. He was the man that was responsible for getting these [1070] men for the ships, wasn't he?

A. Yes, but during the strike he would come up to anybody's house and ask if somebody would take the job.

(Testimony of Leo Hermen.)

Q. All right, that was his job, wasn't it?

A. Yes, sir.

Q. How many men signed that petition?

A. I believe there was around twenty-five or thirty, if not more.

Q. Twenty-five or thirty, or more?

A. Yes, sir.

Q. Now did Rosen and Buckless ask you to take it to Mr. Hand?

A. No. I said I was going to take it up there myself.

Q. You said you were going to take it up there yourself?

A. Yes, sir.

Q. When did you take it to Mr. Hand?

A. That same day. No, about a week after it was drawn up.

Q. And was that in July?

A. In July.

Q. Do you know the exact day?

A. No, I don't remember.

Q. Where did you deliver it to him?

A. I delivered—I went to his house three or four times, with four or five fellows in the car, and he was not home. So that night I went out with my wife, and came back and I seen [1071] Mr. Hand drive into his garage, and therefore I took opportunity of going in and seeing him.

Q. Where does he live?

A. I believe either the 1100 or 1300 block Procter Street; 1100 or 1300 block, one of the two.

Q. What time of day was it?

(Testimony of Leo Hermen.)

A. The time we went there was on a Sunday, about 9:00 o'clock in the morning; and then we went there in the afternoon again, about 2:00 o'clock; and then about 3:00 o'clock, and 5:00 o'clock; and it was Monday when I seen him. I believe it was the next day we went down there again, and that night I seen Mr. Hand.

Q. What time was it?

A. I believe around six or seven o'clock.

Q. Your wife was with you? A. Yes, sir.

Q. Now you say you showed a copy to Mr. Meyer? A. No, sir.

Q. You didn't say that? A. No, sir.

Q. You mailed a copy to Mr. Roney?

A. I didn't mail it.

Q. You didn't mail it? A. No, sir.

Q. Did Mr. Hand read it when you handed it to him? [1072] A. Yes, sir.

Q. What did he say?

A. He said it was my privilege to send Mr. Roney anything I wanted to.

Q. Was that all he said?

A. I believe that is all he responded at that time.

Q. Was there any other time?

A. Yes, sir, there was another time.

Q. When was that?

A. After I seen Mr. Meyer I asked him why he wouldn't ship me.

Q. How long after that, the first talk with Mr.

(Testimony of Leo Hermen.)

Hand, how long after that was that?

A. I believe about a week after that.

Q. Where did you see Mr. Meyer?

A. On the gate, Texas gate.

Q. Over at the gate? A. Yes, sir.

Q. And you handed him a copy?

A. No, sir.

Q. Just talked to him about it?

A. No, sir; just asked him why he wouldn't ship me out, after being the first one on the list.

Q. First on the Seamen's Institute list?

A. Yes, sir, on the Texas list; not the Seamen's Institute [1073] list.

Q. What did Mr. Meyer say?

A. Mr. Meyer told me to go and see Mr. Hand; that he had orders from Mr. Hand and from Mr. Roney not to ship me because I had brought that petition down there. He says: "He can ship from where he damn pleases. He doesn't have to ship from the Institute."

Q. What did you say to that?

A. I just told him he shipped out about twenty men, and that he had been skipping everybody in the Institute that was on top of the list; and he told me it was his business what he does; he doesn't have to ship from the Institute.

Q. Now did you see Meyer again after that?

A. I seen Mr. Hand next.

Q. Where did you see him?

A. At his house.

(Testimony of Leo Hermen.)

Q. At his house again? A. Yes, sir.

Q. When was that?

A. Oh, after he had talked with Mr. Meyer.

Q. After he had talked with Mr. Meyer?

A. Yes, sir.

Q. About when was that, do you know?

A. The same day.

Q. The same day? A. Yes, sir. [1074]

Q. What time of day was that?

A. In the afternoon.

Q. In the afternoon?

A. 4:00 or 5:00 or 6:00.

Q. At his home? A. I saw him, yes, sir.

Q. Was that in July?

A. I believe that was in July.

Q. What? A. I believe that was in July.

Q. You don't know what day?

A. I don't know.

Q. Near the 4th of July?

A. No, it was not the 4th of July.

Q. Latter part of July?

A. Somewhere around there.

Q. Between the middle and the latter part?

A. I don't remember the date.

Q. Now you never put your name on the open list over there, did you? A. Not that I recall.

Q. Now I think you said you saw Meyer again, and that he told you that he had orders that the

(Testimony of Leo Hermen.)

captain said that they didn't want you. Did he say what captain?

A. Yes, sir, he said the captain on the "Nevada". [1075]

Q. Did he say why?

A. No, he didn't give me any reason.

Q. You got along with the captain, didn't you?

A. Yes, sir, I got along.

Q. He never told you he didn't want you, did he?

A. No, sir.

Q. You were a good A. B. seaman?

A. So far I have been good.

Q. Attended to your duties on board?

A. Yes, sir.

Q. All that happened to you on the ship, you got sick?

A. Yes, sir.

Q. Is that all?

A. Yes, sir.

Q. Do you know any reason why the captain wouldn't want you?

A. No, I don't know any reason, unless it is because I gave that statement to Baldy.

Q. Did the captain see that statement?

A. I don't know, sir.

Q. You don't know that he saw it, do you?

A. No, sir.

Q. Had you ever had any talks with the captain?

A. No, sir, not until I got paid off.

Q. I mean Captain Swanson, did you ever see him on deck? [1076]

(Testimony of Leo Hermen.)

A. Yes, I seen him on deck every day. He works like everybody else.

Q. You didn't talk to him though?

A. No. The crew don't talk to the captain.

Q. You got along with the mate, didn't you, Tranberg? A. Yes, sir.

Q. He thought you were a good A. B., didn't he?

A. Yes, sir.

Q. Now I think you said that you were on the list over there last Monday, and you missed a call?

A. Yes, sir.

Q. Did they try to get in touch with you?

A. No, sir. I was not in town.

Q. You were not in town? A. No, sir.

Q. Then they did want to get you last Monday, didn't they?

A. No, sir, they didn't want to get me.

Q. What did you mean when you said you lost a call?

A. You have to answer roll call every Monday. If you don't, you go to the bottom of the list.

Q. Well, maybe they had a job for you last Monday.

A. My wife was at the house, and we have got a telephone across the street.

Q. Who told you they called your name?

A. There was nobody called my name. [1077]

Q. You said they called you.

A. I didn't say they called me. I said if they would have called me.

(Testimony of Leo Hermen.)

Q. You don't know whether they called you or not?

A. If they would have called me my wife would have told me.

Q. You don't know whether they called your name over at the Institute or not?

A. Oh, yes, I would.

Q. Well, did he? A. He did not.

Q. What do you mean when you say you missed a call?

A. I missed answering the roll call. You have to go there every Monday and answer roll call. If you don't, you go to the bottom of the list.

Q. Did you go to the bottom of the list?

A. Yes, sir.

Q. That was because you missed a roll call?

A. That is right.

Q. That was not the fault of Mr. Meyer, was it?

A. No, that was not the fault of Mr. Meyer.

Q. It was not the fault of Dave over at the Institute, was it? A. No.

Q. Now did you ever miss any other roll call?

A. No, sir. [1078]

Q. You are at the bottom of the list now?

A. I am at the bottom of the list now.

Q. How many are there ahead of you now?

A. Somewhere around 75 or 80. That list won't come out until tomorrow.

Q. About 75 A. B.'s?

A. A. B.'s and ordinaries.

(Testimony of Leo Hermen.)

Q. You take an A. B. job, don't you?

A. Yes.

Q. How many A. B.'s?

A. The list won't come out until Tuesday. I will have to go down there and see first.

Q. You don't know whether you are on Mr. Meyer's list that he keeps?

A. No. I am positive I am not on Mr. Meyer's list.

Q. Did you see the list?

A. No, but after he told me if it was up to him he wouldn't ship me at all I am positive I am not on his list.

Q. But you haven't seen the list?

A. No. He wouldn't show me the list.

Q. You are over at the Institute quite often, aren't you? A. Yes, sir.

Q. Do they ship any N. M. U. men on Texas ships from the Institute?

A. They do, but they have to be registered in the Seamen's [1079] Institute.

Q. They have been shipping men, haven't they?

A. Yes, sir.

Q. N. M. U. men?

A. Yes, sir, a few of them.

Q. N. M. U. men? A. Yes, sir.

Q. They have been shipping N. M. U. men on Texas ships? A. Yes, sir.

Q. Do you know any in particular?

A. No, not by names. I know them by faces.

(Testimony of Leo Hermen.)

Q. Do you know any of them?

A. Yes, I do. I remember a couple of fellows' names; a fellow by the name of Robert Clark. He was on the "Nevada".

Q. When was he shipped?

A. Some time ago. Mr. Hart was shipped, the quartermaster; and White was shipped, and Hillside was shipped.

Q. They are all N. M. U. men?

A. Yes, sir.

Q. Do you know any I. S. U. men that were shipped? A. No, sir.

Q. Now while you were on the "Nevada" from April 19 to about May 21, were there any union activities on board, did you notice?

A. No, sir. [1080]

Q. None at all? A. No, sir.

Q. No meetings?

A. Not that I remember. If there was, I don't recall any.

Q. You were not invited to attend any meetings, were you? A. No, sir.

Q. Any notices posted?

A. Not that I remember.

Q. No circulars distributed? A. No, sir.

Q. While you were there were there any grievances they had to present to the captain?

A. No, sir.

Q. None at all? A. No, sir.

Q. Did you or any of the members of the crew

(Testimony of Leo Hermen.)

ever go to the captain or the chief mate in regard to a complaint of any sort?

A. The only complaint was made on account of the water before we got into New Orleans, when I was sick. [1081]

Q. Did you go up to the mate?

A. I went up to the captain.

Q. You went up to the captain?

A. Yes, sir.

Q. What did you tell him?

A. I told him I was sick, and he gave me some medicine.

Q. Did anybody else go up with you?

A. Well, as I recall, about three or four months before the whole crew got sick on account of the same water. They went to the hospital, and a fellow pretty near died on it.

Q. On this trip did anybody go with you?

A. Yes, sir, the ordinary seaman.

Q. Do you know his name?

A. No. All I know, they call him Dutch.

Q. Was he a Union member? A. No, sir.

Q. Was he non-union?

A. Non-union; first trip.

Q. Anybody else get sick when you got sick?

A. There were two or three fellows that complained about the water, and they had stomach aches.

Q. Who complained?

A. White complained and Hillside.

(Testimony of Leo Hermen.)

Q. Were they N. M. U. members?

A. Yes, sir. [1082]

Q. Did they complain to the captain or who?

A. No, they told me they were sick the same day I was.

Q. Did they get medicine?

A. No, sir, they didn't get medicine. They were not as bad sick as I was.

Q. Did you tell the captain that others were sick?

A. That ordinary seaman went up there and told him about it.

Q. Did you tell him White and this other fellow were sick? A. Yes, sir.

Q. Any other complaint while you were on there? A. Not that I recall.

Q. Not that you know of? A. No, sir.

Q. And now how many separate trips did you have while you were on the "Nevada;" how many times were you in here at Port Arthur?

A. Since——

Q. You started on April 19, and you left New Orleans May 21. How many separate trips did you have in there? A. Just one trip.

Q. Where did you go when you left Port Arthur April 19th? A. We went to New Haven.

Q. I believe you came back——

A. No, sir, we went on dry dock.

Q. And you stayed out how long? [1083]

A. About twelve or thirteen days.

(Testimony of Leo Hermen.)

Q. I believe you came back——

A. To New Orleans.

Q. To New Orleans? A. Yes, sir.

Q. Now, is White still on that boat?

A. No, sir. He got off in New Orleans.

Q. Did he get off with you? A. Yes, sir.

Q. Voluntarily? A. Yes, sir.

Q. Of his own accord? A. Yes, sir.

Q. Was not fired? A. No, sir.

Q. This other man, what was this other man's name? A. Hillside.

Q. Where did he get off?

A. New Orleans.

Q. He got off of his own accord too?

A. Yes, sir.

Q. He was not fired? A. No, sir.

Q. Did he get off because he was ill?

A. Because he was sick? [1084]

Q. Because he was sick.

A. I don't know.

Q. You don't know? A. No, sir.

Q. Have either of these men been shipped again?

A. They have all been shipped except me.

Q. What ship is White on?

A. I don't know, but they are on Texas Company ships. I believe Hillside is on the "Pennsylvania," I believe.

Q. On the "Pennsylvania?"

A. Yes, sir. And Clark, I believe, is on the, or

(Testimony of Leo Hermen.)

was on the "Roanoke."

Q. What?

A. I don't remember what ship.

Q. Did they sign that petition, either one of those men sign that petition you drafted?

A. I don't know whether they have signed the petition or not. If they did, it would be on the petition.

Q. Could you tell by looking on the petition?

A. I could.

Mr. Van Dusen: Mr. Wright, would you mind showing the witness the petition to refresh his recollection as to whether Mr. White or Mr. Hillside signed it.

(Mr. Wright handed the document to the witness.)

A. If their names are not there, they must have shipped out before. [1085]

Q. Do you see any other N. M. U. men on that petition?

A. There are quite a number of N. M. U. men.

Q. Can you name a few?

A. No, I can't call them by name, because they all have nicknames. I didn't ask their names.

Q. You mean you just saw them?

A. I didn't know Rosen's last name until I came back here. I only knew him by "Baldy." I only know the fellows by nicknames.

Q. I see. Do you know whether any men were fired from the "Nevada" when it got into Port

(Testimony of Leo Hermen.)

Arthur on that trip you were taking?

A. I didn't come into Port Arthur.

Q. Do you know whether any men were fired?

A. I don't know. I left in New Orleans.

Q. You went to Port Arthur?

A. I didn't go to Port Arthur.

Q. From New Orleans, you did.

A. I went on the bus.

Q. When you got back to Port Arthur, did you inquire as to any men that were on board?

A. Yes. No, there was not anybody fired that I know of.

Q. I see. Now, when you prepared this petition, or assisted in preparing it, you were doing that chiefly to help the N. M. U. men, weren't you?

[1086]

A. No, sir, I was doing it to help myself and other people that couldn't ship out of the Seamen's Institute.

Q. Were you doing it to help White and Hillside?

A. No, they—everybody around there that has been sitting there, not getting a job, not getting a ship out, because Mr. Meyers has been shipping them all. He has not shipped the fellows up on top of the list.

Q. White got shipped out? A. Yes.

Q. Wasn't he at the top of the list?

A. No. He was two behind me.

Q. He is an N. M. U. man? A. Yes, sir.

(Testimony of Leo Hermen.)

Q. How about Hillside, was he ahead of you?

A. No, he was behind me.

Q. He was behind you, too?

A. Yes, sir. He got shipped out, too.

Q. When were they shipped out, do you remember? A. I don't recall the day.

Q. Well, was it a month ago?

A. About a month ago, or five weeks ago.

Q. A month or five weeks ago?

A. Yes, sir. [1087]

Q. You think if you had not signed that petition you would have been shipped out on Texas ships? A. I am sure of that.

Q. You are sure of that?

A. Yes, sir; because Mr. Meyer told me it was on account of the petition that he got orders from Mr. Hand and Roney not to ship me.

Q. Do you know whether any of the men who signed that petition have been shipped?

A. I believe they have, because I can't see their faces.

Q. Some of them have? A. Yes, sir.

Q. Some of the N. M. U. men?

A. I believe so.

Q. You don't like Mr. Meyer very much?

A. There ain't no love lost between me and him.

Q. How about Mr. Hand?

A. Well, after what he said, I don't think I would like him.

Q. But you like The Texas Company ships?

(Testimony of Leo Hermen.)

A. Yes, sir.

Mr. Van Dusen: I think that is all.

Trial Examiner Myers: Any redirect examination?

Mr. Wright: Yes, sir. [1088]

Redirect Examination

Q. (By Mr. Wright) Mr. Hermen, how long have you been to school?

A. Three months all my life.

Q. Three months all your life? A. Yes, sir.

Q. Before we recessed here for the noon hour did you know that there was a distinction and difference between the word charge and a lawsuit?

A. No, sir, I didn't.

Q. Do you now know that there is a difference?

A. Yes, sir, I do.

Q. Where did you find out the difference?

A. I found it out from you.

Q. Now, after you got off the "Nevada" did you think you had a lawsuit? A. Yes, sir, I did.

Q. Because of the drinking water you got on board the ship? A. Yes, sir.

Q. Did you go to see a lawyer?

A. I went to see a lawyer, yes, sir.

Q. Did you go to see any lawyer from Mandell & Combs' office, that I represent?

A. No, sir.

Q. Who did you go to see? [1089]

A. A fellow by the name of Watson.

Q. Who?

(Testimony of Leo Hermen.)

A. A fellow by the name of Watson, Alton Watson.

Q. Who told you to go see him?

A. I looked him up in the telephone. I had word with him about three days, and the only reason he told me I didn't have a case, I didn't have \$25.00 to pay for an analysis.

Q. What was that?

A. Because I didn't have \$25.00 to pay for a water analysis.

Q. Do you remember which building, Mr. Watson is in?

A. Yes, sir, Adams Building, second floor.

Q. Now, have you also talked to anybody connected with the National Labor Relations Board?

A. Yes, sir.

Q. Where did you talk with him?

A. I talked with Mr. Rosen and Mr. Ames at the N. M. U.

Q. Did you also go to the Goodhue Hotel?

A. Yes.

Q. Did you talk to a man from the National Labor Relations Board there in the hotel?

A. Yes, sir.

Q. Did you sign an affidavit for him?

A. Yes, sir.

Q. How long was it after you got off the "Nevada" you went up to the Goodhue Hotel to see this man? [1090]

(Testimony of Leo Hermen.)

A. About three or four days after I came back from New Orleans.

Q. From New Orleans?

A. Yes, sir; I think around the twenty-fifth.

Q. Who asked you to go see this man in the Goodhue Hotel? A. Mr. Rosen.

Q. Did he go up with you? A. Yes, sir.

Q. And you stayed up there in the Goodhue Hotel with Mr. Rosen and talked to this man?

A. Yes, sir.

Q. Do you remember the name of the man?

A. I would remember it if I heard it.

Q. Was it Lebus? A. Lebus.

Q. Now, during the time when you talked to Mr. Lebus in the hotel did you sign an affidavit at the conclusion of your talk with him, after you got through talking with him, after you got all your statements made, did you sign an affidavit?

A. Yes, sir.

Q. Does that affidavit say substantially what you told Mr. Lebus at that time? A. Yes, sir.

Q. Did he undertake to write out what you said?

A. Yes, sir. [1091]

Q. And you signed it after reading it over?

A. Yes, sir.

Mr. Pipkin: Mr. Examiner, the affidavit would be the best evidence of whether it contained what he said.

Mr. Wright: We will connect it up.

Mr. Pipkin: Move that it be stricken until it is connected up.

(Testimony of Leo Hermen.)

Trial Examiner Myers: They are going to put it in. What is the use going a roundabout way? Are you going to put the affidavit in?

Mr. Wright: No, sir, we don't plan to.

Mr. Pipkin: I insist on my motion.

Mr. Wright: I will connect it up.

Trial Examiner Myers: Why are you handing the witness a piece of paper if you don't intend to put it in evidence?

Mr. Wright: Mr. Examiner, this purports to be an affidavit this man executed. There are statements made in here about which this man has testified. We do not propose to put this in evidence and allow the attorney for the respondent to cross examine on the basis of it.

Trial Examiner Myers: As soon as you give this paper to the witness the attorney for the company has got the right to examine it, and has got the right to cross examine the witness on it. If you want to keep the paper out, you should not hand it to the witness. [1092]

Mr. Wright: You mean he cannot consult it for the purpose of refreshing his recollection?

Trial Examiner Myers: Yes, but if he examines it then counsel has the right to cross examine the witness about the paper. If he takes the paper in order to refresh his recollection, counsel has a right to cross examine with reference to it. What are you going to do about it?

Q. (By Mr. Wright) Mr. Hermen, during the

(Testimony of Leo Hermen.)

course of your conversation with Mr. Lebus, did you tell Mr. Lebus you were fired off the "Nevada"?

A. No, sir.

Q. Did you tell Mr. Lebus why you got off the "Nevada"?

A. I told him on account of the water.

Q. Did you tell him you got off of your own free will?

A. Because I was sick and had to get off, and had to see a doctor.

Q. Now, when you signed the affidavit did you read it?

A. Yes, sir, I read it.

Q. Do you remember whether or not there is anything said in that affidavit——

Trial Examiner Myers: Can you read?

A. Yes, sir.

Q. Can you read the English language?

A. Yes, sir.

Q. And you only went to school three months?

[1093]

A. Yes, sir.

Q. How old are you?

A. I am thirty-three.

Q. And you only went to school for three months?

A. That is all. [1094]

Q. You can read?

A. Yes, sir.

Trial Examiner Myers: Proceed then.

Q. (By Mr. Martin) When you read that piece of paper do you remember whether or not there was anything in it about your having been fired off

(Testimony of Leo Hermen.)

the "Nevada"?

Mr. Van Dusen: Just a minute. He is asking this witness what is in the paper. I submit the affidavit is the best evidence, and I object to the question, unless he intends putting in the affidavit.

Trial Examiner Myers: I will sustain the objection.

Q. (By Mr. Wright) Were you under oath at the time the affidavit was executed?

A. Was I what?

Q. Did he swear you when you executed it?

A. Yes, sir.

Q. Mr. Hermen, have you ever talked with Mr. Ames and Mr. Rosen with respect to the affidavit you made for Mr. Lebus up in the hotel?

A. Yes, sir.

Q. Was any discussion ever had among the three of you about filing charge for you with the National Labor Relations Board?

A. Yes, there was a discussion made about it.

Q. You were on the "Nevada", Mr. Hermen, after Mr. Buckless and Mr. Rosen got off, is that right? [1095]

A. Yes, sir.

Q. Would you say that there was a considerable amount of union activity on the ship when you got on her?

A. No, sir.

Q. And after the ship sailed out?

A. No, sir.

Q. You have been on ships where there was union activity?

A. Yes, sir.

(Testimony of Leo Hermen.)

Q. Would you say there was a small amount?

A. There was none at all.

Q. Union activity?

A. There was none at all.

Q. None at all after you got on? A. No, sir.

Q. There was before Mr. Buckless and Mr. Rosen got off the ship in Port Arthur?

A. Yes, sir.

Q. You have now decided to join the N. M. U.

A. Yes, sir.

Q. Is that your testimony? A. Yes, sir.

Q. And that is of your own free will and accord?

A. That is of my own free will.

Mr. Martin: Mark that, please, Mr. Reporter.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 10" for identifica- [1096] tion.)

Q. (By Mr. Wright) Mr. Hermen, I hand you instrument that has been marked Board's Exhibit 10, and ask you whether or not this is a copy of the affidavit that you executed in front of Mr. Lebus when you met him in the Goodhue Hotel on the occasion when Mr. Rosen went up there with you?

A. Yes, I signed that.

Mr. Wright: Mr. Examiner, we offer in evidence the instrument, as identified and marked as Board's Exhibit 10 for identification, as Board's Exhibit 10.

Trial Examiner Myers: Any objection?

Mr. Van Dusen: May I look at it?

(Testimony of Leo Hermen.)

Trial Examiner Myers: Sure. You have a copy.

Mr. Van Dusen: Yes, sir, I have a copy. No objection.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark Board's Exhibit 10 for identification in evidence as Board's Exhibit No. 10.

(The document heretofore marked "Board's Exhibit No. 10" for identification, was received in evidence.)

BOARD'S EXHIBIT No. 10

Texas Company

Leo Herman

1439 Houston Avenue

Port Arthur, Texas

Bx 10

Phone 2530 (across street)

State of Texas,
County of Jefferson.

To whom it may concern:

I, Leo Herman, reside at 1439 Houston Avenue, Port Arthur, Texas, have been an employee of the Texas Company, as follows:

(1) I was employed on or about June 1, 1924 to work on the SS Franklin steamship, and worked until on or about August 30, 1924.

(2) I was employed on or about July 1, 1935, to work on the SS Alabama steamship,

(Testimony of Leo Hermen.)

and worked for one trip, until about July 15, 1935, when I was left behind when the boat left port.

(3) I was employed on or about August 19, 1937 to work on the SS New Jersey steamship, and I worked until about March 12, 1938, when I quit.

(4) I was employed on or about May 28, 1937, to work on the SS Dingannan, classified as an able bodied seaman, and I worked until July 8, 1937, resigned by request from Mate, because of difference concerning working schedule.

(5) I was employed again on or about April 19, 1938 to work on the SS Nevada, and was classified as an able bodied seaman, and worked until on or about May 21, 1938, at which date I quit because of illness. I became ill while on ship due to the poison drinking water.

I joined the International Seamans' Union in 1923, and have been a member of this organization on and off since that date.

When I went on board of the SS Nevada "Baldy" (Gorden Rosen) asked me if I was a member of the NMU. I told him that I belonged to the ISU. At about 8:00 A. M., twenty minutes after my conversation with "Baldy", I talked with the Mate, Carl Tranberg, at which time the following conversation transpired:

(Testimony of Leo Herman.)

Herman—There seems to be a little misunderstanding with me and the crew about not being a member of the NMU.

Mate (Tranberg)—If you want a job, go and turn to with the Boatswain, as far as the union is concerned I don't give a godamn, them guys think because they belong to the union they run the ships but they don't run the ships around here.

At about 12:05 noon on April 19, 1938, the Mate approached me and the following conversation transpired:

Mate (Tranberg)—The union is no good, it used to be alright but they got a bunch of puncks in it—(he ran down the union otherwise also).

Herman—I'm a member of the ISU.

Mate—Who was the fellow that asked you about having a union book?

Herman—I'm not a rat.

Mate—I know who asked you—it's Baldy (Rosen)—Baldy was a good man, but he let the union go to his head—that Boatswain (Buckless) was another good man but he let the union go to his head—every damn time a man came aboard he asked him if he had a union book—as far as I'm concerned I'd rather not have a union man on here anyway—the Boatswain got

(Testimony of Leo Herman.)

fired for union activity but the "Skipper" (Captain) found a reason of his own.

On or about April 29, 1938, the Mate and I conversed again and the following transpired:

Herman—Why did you fire "Baldy", you didn't fire him on account of me?

Mate—I fired him (Baldy) on account of union activity but I didn't tell him, because you can't fire a man on ship on account of union activity. I gave him another reason for it.

Herman—If I'd known that I wouldn't have taken the job, because I've got fired myself on account of union activity on other jobs.

LEO HERMAN

1439 Houston Avenue

Port Arthur, Texas

Subscribed and sworn to before me this 25th day of May, 1938, at Port Arthur, Texas.

JOHN F. LEBUS,

Field Examiner, National Labor Relations Board,
Sixteenth Regional Office, Fort Worth, Texas.

Mr. Wright: That is all.

Trial Examiner Myers: Any recross, Mr. Van Dusen?

Mr. Van Dusen: Yes, sir.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Herman, at the

(Testimony of Leo Hermen.)

time you talked to Mr. Lebus, did he tell you that he was filing charge against [1097] The Texas Company for violating the Labor Act?

Trial Examiner Myers: I think you have got the thing a little twisted, haven't you? Mr. Lebus represents the Board. The Board doesn't file charges.

Q. (By Mr. Van Dusen) What did Mr. Lebus say to you? A. I don't recall what he said.

Q. You don't recall what he said?

A. No, sir.

Q. On this "Nevada" was a man named Lee Holmes, do you remember?

A. No, I wouldn't know. If he had a nickname on there——

Q. An A. B. Do you remember him?

A. No. There was Hillside—No, I don't remember him.

Mr. Van Dusen: All right, that is all.

Trial Examiner Myers: Is that all? You are excused.

(Witness excused.)

Mr. Martin: Mr. John Owens.

JOHN OWENS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of John Owens.)

Direct Examination

Trial Examiner Myers: Will you give the reporter your name and address, please?

A. John Owens, 202 Fifth Street, Port Arthur, Texas. [1098]

Q. (By Mr. Martin) Mr. Owens, did you ever work on the SS "California"? A. Yes, sir.

Q. About when were you on her?

A. From about October 10 to October 28 or 29.

Q. What year? A. 1937.

Q. What day of the week was it when you went aboard? A. Sunday morning.

Q. Did you have a discussion with any official, any officer of the ship?

A. I took my assignment card to Mr. Rosen, the chief mate. He asked me if I had a book. I asked him what kind of a book, and he said Copeland book; and I said: "No, sir. I have a certificate of identification."

And he said: "Let's see it."

And I gave it to him. And he said: "Come to my room. I would like to talk to you."

Q. Where were you standing then?

A. Where was I standing in the first part of the conversation?

Q. Yes.

A. Around about No. 5 wing tank, I believe. When I got to his room he said: "The Texas Company doesn't recognize any union, you know."

[1099]

(Testimony of John Owens.)

And I said: "Yes, sir, I know that."

And he said: "We don't want any union agitation back there. We are all together on this ship. There is plenty of time off. This is only a relief trip. It is up to you to make a permanent job out of it if you want to."

And he said: "If that is all right, you can sign on."

And I said: "All right, sir."

Q. How had you gotten the job?

A. Through the Seamen's Institute.

Q. Was anything said to you about it being a relief trip before then? A. No.

Q. When you got aboard did you understand you were to make a relief trip?

A. Not until I talked to Mr. Rosen.

Q. Dave Rosen? A. Yes, sir.

Q. Can you tell me where the boat was seven or eight days later?

A. In Bayonne, New Jersey.

Q. Did you overhear a discussion or remark that day that you remember?

A. I overheard several of them, I guess; one in particular. [1100]

Q. Tell us about that one.

A. Soon after we got the hose connected up to pump the cargo ashore me and the boatswain had started to go forward for something. I don't remember just what it was, and second mate Baldwin was calling to an ordinary seaman to come and help

(Testimony of John Owens.)

open some valves. And the boatswain asked him if he wanted me to help, and spoke to me, John. And he said, no. And he remarked that one of the ordinary seamen, I forget what his name was, we called him Pete, could do that; and he remarked: "We don't need none of those rank and filers. We can get along without them."

Q. Who said that?

A. Second Mate Baldwin.

Q. Were you a rank and filer at that time?

A. I was a member of the N. M. U.

Q. How many N. M. U. were there?

A. I don't know exactly, on the whole ship. There was about three in the deck department, I believe; not more than five on the whole ship altogether, anyway.

Q. How many members are there to the deck force in all?

A. On the "California", I believe thirteen.

Q. Of whom you say only eleven were N. M. U. men?

A. That is right.

Q. Were any union meetings held while you were on the boat?

A. No, sir. [1101]

Q. How many trips did you make?

A. Only one trip.

Q. One trip? A. That is right.

Q. Why did you leave?

A. I didn't like the conditions on the ship, working conditions.

Q. What was the matter?

(Testimony of John Owens.)

A. Well, they were working at night time and there was no overtime paid aboard the ship; and during that whole trip I put in about fourteen hours overtime, and never have got any time for it.

Q. Anything else?

A. Well, there seemed to be quite a bit of anti-union feeling aboard the ship.

Q. There did? A. Yes, sir.

Q. Were you fired? A. No, I quit.

Mr. Martin: That is all.

Cross Examination

Q. (By Mr. Van Dusen) Mr. Owens, what was your job, ordinary seaman? A. Able seaman.

Q. Able-bodied seaman? A. Yes, sir.

[1102]

GORDON ROSEN

was recalled and testified further as follows:

Cross Examination

Q. (By Mr. Van Dusen) Mr. Rosen, you recall when you testified before I showed you shipping articles which you signed, and you said there was another trip before you finally left the SS "Washington". Do you remember that testimony?

A. I believe there was.

Q. I showed you articles of June 1, and you said there was another trip about June 22?

(Testimony of Gordon Rosen.)

A. Yes, sir.

Q. I show you these articles, and ask you if those are not the articles you signed? A. Yes, sir.

Q. That covers the last trip before you say you were discharged, isn't that correct?

A. Yes, sir.

Q. Mr. Buckless was on that same trip, was he not, and signed those same articles?

A. I couldn't testify to his signature.

Q. He was on that same trip? A. Yes, sir.

Mr. Van Dusen: I offer these articles in evidence. [1130]

Trial Examiner Myers: Any objection? Hearing no objection, I ask the reporter to please mark the articles as respondent's Exhibit No. 11.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 11 for identification and received in evidence.)

Trial Examiner Myers: Is that all?

Mr. Martin: That is all.

Mr. Van Dusen: I made this same reservation with reference to Mr. Buckless, and I merely want to ask him if his signature is on there. [1131]

CLARENCE BUCKLESS

resumed the stand and testified further as follows:

Recross Examination

Q. (By Mr. Van Dusen) Mr. Buckless, I show

(Testimony of Clarence Buckless.)

you the shipping articles dated June 22, 1938, of the SS "Washington". I am showing you Plaintiff's Exhibit No. 11 and I ask you if you signed these shipping articles? A. Yes, sir.

Q. That was the last trip before you say you were discharged? A. The trip before?

Q. Yes, the last trip you made on the "Washington"? A. Yes.

Mr. Van Dusen: Thank you.

(Witness excused.)

E. H. BALDWIN,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Myers: Will you give your name and address to the reporter, please?

A. E. H. Baldwin.

Trial Examiner Myers: What does the E. stand for? A. Edward.

Trial Examiner Myers: And what is your address?

A. The Goodhue Hotel, Port Arthur, Texas.

[1132]

Direct Examination

Q. (By Mr. Van Dusen) Mr. Baldwin, are you employed by The Texas Company?

A. Yes, sir.

(Testimony of E. H. Baldwin.)

Q. In what capacity?

A. Second mate at the present time.

Q. Second mate aboard what ship?

A. The "California".

Q. How long have you been second mate aboard the "California"? A. Five years.

Q. Five years? A. Five years.

Q. That is since approximately what date?

A. Since about the first of 1934.

Q. Were you employed by The Texas Company prior to that time? A. Yes, sir.

Q. In what capacity?

A. As third mate on the "California".

Q. How long were you third mate on the "California"? A. From November 7, 1931, to 1934.

Q. On the "California" all that time?

A. Yes, sir.

Q. And were you employed by The Texas Company still prior [1133] to that? A. Yes, sir.

Q. In what capacity? A. As third mate.

Q. On another ship? A. Yes, sir.

Q. What ship?

A. The SS "Shenandoah."

Q. How long were you third mate on that ship, Mr. Baldwin? A. Approximately a year.

Q. Approximately a year? A. Yes, sir.

Q. Were you on any other ships prior to that time? A. Yes, sir.

Q. What ship? A. The "Ayrian".

Q. What were you on that ship?

(Testimony of E. H. Baldwin.)

A. As third mate.

Q. And how long were you third mate on that ship? A. Approximately one year.

Q. How about prior to that time?

A. Yes, sir.

Q. What ship were you on?

A. The "Texas". [1134]

Q. The "Texas"? A. Yes, sir.

Q. And what were you on that ship?

A. I was quartermaster there for 18 months.

Q. And prior to that time?

A. That was my entry into the Texas Company.

Q. What year was that?

A. September 17, 1928.

Q. So on your first job with The Texas Company you were employed as——

A. (Interrupting) As an able-bodied seaman.

Q. (Continuing) As an able-bodied seaman?

A. Yes, sir. I was later promoted to quartermaster.

Q. On the ship the "Texas"?

A. On the "Texas", yes, sir.

Q. Now how long have you been going to sea?

A. Fourteen years.

Q. Fourteen years? A. Yes, sir.

Q. How did you start?

A. My brother carried me with him. He was an A. B. on a ship and he got me a job as an ordinary seaman and I went off with him.

(Testimony of E. H. Baldwin.)

Q. Did you have to have a license to be an ordinary seaman?

A. No, sir, you didn't have to have nothing in those days. [1135]

Q. You were sort of an apprentice?

A. Yes, as an apprentice.

Q. How long was it before you became an A. B.?

A. Within three years after that.

Q. Within three years?

A. Yes, sir. I became an able-bodied seaman.

Q. You got a license?

A. I got an A. B.'s ticket and a life boat ticket.

Q. How long after that was it before you became third mate?

A. I became third mate in January, 1930.

Q. 1930? A. Yes, sir.

Q. Do ordinary seamen today have to get licenses?

A. No. The only thing they have is a certificate of identification and the necessary papers to sign on at the present time according to the new rules.

Q. I mean do they have to go to any particular place to get this certificate of identification?

A. Yes. They have to go to the custom house as a rule.

Q. Do they have to qualify in any way?

A. No, sir, not as an ordinary seaman. The only thing they have to produce is a birth certificate showing that they are American citizens.

(Testimony of E. H. Baldwin.)

Q. Can anybody become an ordinary seaman today?
A. Yes, sir. Can qualify to get papers.

[1136]

Q. Now, Mr. Baldwin, were you second mate on board the SS "California" on or about June 30, 1937?
A. Yes, sir.

Q. Who was captain of the ship at that time?

A. Captain Peterson.

Q. Is he still captain of that ship?

A. No, sir.

Q. What happened to him?

A. He has retired from The Texas Company altogether.

Q. When did he retire?

A. He retired in April, if I am not mistaken; April or the first of May of this year.

Q. Do you know where he is now?

A. He is in Norway at his home.

Q. Now at that time who was the chief mate on board the ship?
A. I was chief mate.

Q. You were chief mate?
A. Yes, sir.

Q. Were you the regular chief mate?

A. No, sir. I was relieving chief mate.

Q. Who was the chief mate you were relieving?

A. Mr. Dave Rosen.

Q. Where was he at the time?

A. He was in the Marine Hospital in New York.

[1137]

Q. Now when did he get back to the ship approximately?

(Testimony of E. H. Baldwin.)

A. It was some time in July or the first of August; the last of July or the first of August.

Q. Of what year? A. Of 1937.

Q. Now just a minute, Mr. Baldwin. I am talking about June 30, 1937, and he came back some time at the end of July or the first of August of that year?

A. Yes, sir, if I am not mistaken.

Q. Who was the third mate on board that ship?

A. Mr. Monroe.

Q. Now were there different departments on that ship?

A. Yes, sir, there are three departments.

Q. What were the departments?

A. There is the deck department, the steward's department and the engine room department.

Q. How many men do they have in the deck department? A. There are thirteen men.

Q. Who was in charge of the deck department?

A. The chief mate.

Q. Mr. Rosen, when he was there?

A. When he was there.

Q. And when he was not there were you in charge? A. I was in charge of it.

Q. How many men in the steward's department?

[1138]

A. There are seven men.

Q. Who was in charge of that department?

A. The steward.

Q. Who was he at that time?

(Testimony of E. H. Baldwin.)

A. Chester Moody was his name.

Q. Moody? A. Yes, sir.

Q. How many men were there in the engine room department?

A. Roughly speaking, there are about 17. I would have to count them to make sure.

Q. Who was in charge of that department?

A. The chief engineer.

Q. Do you remember his name?

A. Peterson.

Q. Peterson? A. Yes, sir.

Q. Was he related to the captain?

A. No, sir, no relation whatsoever.

Q. Now is the captain in complete charge of the ship? A. Yes, sir.

Q. Does every one, including the heads of those departments, have to take orders from him; that is, from the captain? A. Yes, sir.

Q. What are the duties of the chief mate?

A. The upkeep of the ship and the handling of the cargo, [1139] loading and discharging it, and of the deck department.

Q. He is in charge of the deck department?

A. Yes, sir, he is in charge of the keeping up of the ship, the loading and discharging of the cargo, and he is solely responsible for the cargo.

Q. When the captain is absent does he assume charge of the ship?

A. Yes, sir, he assumes command of the ship when the captain is ashore.

(Testimony of E. H. Baldwin.)

Q. What are the duties of the second mate?

A. The duties of the second mate are to stand his watch at sea and in port to assist the chief mate and he stands his watch at night time. The second and third mates settle their watches between themselves. The chief mate has the day watch between 8:00 o'clock and 4:00 o'clock in the afternoon, and it is between the second and the third mate as to who takes the watches between 4:00 o'clock in the afternoon and 8:00 o'clock in the morning. It is between the two of them. For instance if I want the first watch, I take it and if the other mate wants the first watch then he takes it. That is between the two mates.

Q. And while the second and third mate are in charge do they assume the duties of the chief mate?

A. To a certain extent. If the chief mate is ashore they have charge of it, but if he is aboard the ship he is respon- [1140] sible for it. He can give any orders or change anything he might see fit to do.

Q. You say the chief engineer is in charge of the engine department?

A. Yes, sir, the chief engineer is in charge of the engine department.

Q. What type of men does he have under him?

A. Well, he has his assistants. He has three assistants, he has his pumpman and he has his oilers and his firemen and his wipers.

(Testimony of E. H. Baldwin.)

Q. What are the duties of an A. B., an able-bodied seaman?

A. He has to stand his watch and do the necessary duties around the deck; whatever may come up to be done; in the way of splicing lines, wires, painting and chipping, and so forth, tying up the ship, letting go the ship, and he stands lookout at night and he relieves the quartermaster.

Q. And what are the duties of an ordinary seaman?

A. The duties of an ordinary seaman are practically the same. He is under the boatswain and he works around the deck with everybody else. We have three of them. They stand watches. We have five of them all told; two of them are maintenance men. There are five of them and they stand watches.

Q. Does the boatswain have to be an A. B.?

A. Yes, sir, he has to have an A. B. ticket and a life boat [1141] ticket.

Q. Is he in charge of the able-bodied seamen?

A. No, sir.

Q. What does he do?

A. He helps the A. B.'s. He takes orders from the mates and he tells them what to do. It is our duty to tell him anything we see fit to do. If I want to take one man off one job and put him another, that is my privilege as a mate aboard the ship.

Q. Does a quartermaster have to be an A. B.?

(Testimony of E. H. Baldwin.)

A. Yes, sir, he has to have an A. B. ticket and a life boat ticket.

Q. What are his duties?

A. To steer the ship at sea and stand the regular watches, and in port to stand around the deck and take orders from the mates in the way of watching the gangway and the lines and opening and closing valves when you are handling cargo.

Q. How many quartermasters do you have?

A. Three.

Q. Three shifts? A. Yes, sir.

Trial Examiner Myers: That is a pretty important position, isn't it, quartermaster?

A. It is a pretty important position in the way of steering a ship. [1142]

Q. (By Mr. Van Dusen) Is he an officer of the ship? A. No, sir.

Q. Would you say a first or second pumpman is an officer of the ship? A. No, sir.

Q. From whom does he take orders?

A. He takes orders from the chief engineer at sea and in port when we are loading or discharging cargo he is under the charge of the chief mate; that is, when you are handling cargo or running pumps.

Q. Is his an operating job?

A. Yes, sir, his is an operating job. He operates the pumps. They start them pumps and stop them whenever we see fit to start and stop them.

Q. Does he give orders to anybody, the second pumpman? A. No, sir.

(Testimony of E. H. Baldwin.)

Q. When you arrive at a port do some of the men have to remain on duty on the ship?

A. Oh, yes, sure. The day we arrive in ports, if we come in at 8:00 o'clock in the morning and we tie up and all, the crew is supposed to work until 5:00 o'clock in the afternoon. Then their day is finished, but the three quartermasters, as is customary with The Texas Company, they get a relief at [1143] 4:00 o'clock in the afternoon. There is no quartermasters on night duty. The same way with the mates and pumpmen. We have relieving quartermasters, mates and pumpmen, but this is the only place that they have that. Up at northern terminals they don't have that. In northern terminals there is a mate on watch and a quartermaster and a pumpman on watch at all times when they are discharging cargo, and when all the cargo is out they proceed to sea.

Q. It is customary when your ship leaves Port Arthur to sign shipping articles with the crew to take that voyage?

A. Yes, sir, it is very important to sign articles at the beginning of every voyage.

Q. Are those called coastwise shipping articles?

A. Coastwise shipping articles.

Q. If you take a foreign trip are different types of articles signed? A. Yes, sir.

Q. What is the difference between foreign shipping articles and coastwise, if you know?

Mr. Wright: I am going to object to this be-

(Testimony of E. H. Baldwin.)

cause it involves a legal conclusion.

Mr. Van Dusen: Well, it is explanatory.

Trial Examiner Myers: Overruled.

Mr. Wright: Note an exception.

Mr. Van Dusen: Read the question. [1144]

(The last question was read.)

A. The difference between them is that they are a different type of articles and they are read in front of the crew and a United States Shipping Commissioner.

Q. That is the foreign articles?

A. Yes, sir, and you are bound to live up to those articles until the ship returns to final port of discharge, where the Commissioner comes aboard and pays you off just as he signs you on. If you come to a port the Commissioner has to be present when he pays you off.

Trial Examiner Myers: What happens on coastwise? A. Coastwise?

Trial Examiner Myers: Coastwise articles.

A. They sign the articles, but they don't have to sign it in front of any Shipping Commissioner.

Trial Examiner Myers: They are supposed to sign them in front of the captain?

A. The captain or the mate; either one or the other. The articles are read.

Trial Examiner Myers: Read before the boys?

A. Yes, sir, the articles are read.

Trial Examiner Myers: Is it common practice for the crew to sign after the ship has sailed?

(Testimony of E. H. Baldwin.)

A. Yes, sir, as you go down the canal. We have done that.

Trial Examiner Myers: Suppose they sign a couple of [1145] days after you set sail?

A. No, we never do that.

Trial Examiner Myers: You never do that?

A. No, sir, because in the mornings we sail early and all of our crew is not aboard.

Trial Examiner Myers: Suppose you sail at night?

A. Then they will be signed the next day. A lot of men are not able to sign their name as you leave the dock and they have to be able to sign their name. [1146]

Trial Examiner Myers: You mean they are not sober enough to sign their name?

A. Yes, sir. I have seen it that way. And as a rule, Port Arthur is a home port for most of these men and they go ashore and they don't come back until the next morning.

Q. (By Mr. Van Dusen) Now, with reference to these coastwise trips where the articles are signed at Port Arthur, what is the customary period for those articles?

A. The customary period?

Q. Yes.

A. Not exceeding over two months.

Q. And do they usually provide for discharge at Port Arthur? A. Yes, sir.

Q. Now, are new articles signed up only at the

(Testimony of E. H. Baldwin.)

end of the voyage?

A. At the end of the voyage, yes, sir.

Q. But do they pay off at various ports?

A. No, sir. At the present time, running the coast, we pay off in Port Arthur all the time. Otherwise we go in a shipyard up North and then we pay off because we are going to be there.

Trial Examiner Myers: Are you attached to a vessel at the present time? A. Yes, sir.

Trial Examiner Myers: Which one? [1147]

A. The "California."

Trial Examiner Myers: Is it here in Port Arthur at the present time? A. No, sir.

Trial Examiner Myers: Where is it?

A. She is on her way up to Baltimore.

Trial Examiner Myers: Baltimore?

A. Yes, sir.

Trial Examiner Myers: Are you on vacation?

A. Yes, sir.

Trial Examiner Myers: Are you on vacation now?

A. Yes, sir. I was taken off here by The Texas Company.

Trial Examiner Myers: You mean for this hearing? A. Yes, sir, for this hearing.

Trial Examiner Myers: So you would be here for the hearing?

A. For the hearing whenever they wanted me.

Trial Examiner Myers: When did you sign the articles?

(Testimony of E. H. Baldwin.)

A. When did I sign the articles? The last time the ship left here going north.

Trial Examiner Myers: When was that?

A. That is around the first of September or the last of August; around the last of August.

Trial Examiner Myers: When is it due back here?

A. It is due back here in about ten days. [1148]

Trial Examiner Myers: What are you going to do after the ship is back here?

A. I will rejoin my ship and sail with her.

Trial Examiner Myers: And you are going to rejoin as second mate?

A. Yes, sir, I am going to rejoin as second mate as far as I know at the present time.

Q. (By Mr. Van Dusen) Do you have to sign the articles as well as the other seamen?

A. Yes.

Q. Does the captain?

A. The captain signs the face of the articles.

Q. The chief mate? A. Yes, sir.

Q. Now before a ship leaves Port Arthur after loading, do you have to have a required number of men in each department aboard?

A. Yes, sir, we have to have a full crew; a full complement.

Q. Now whose duty is it to see that you have a full crew?

A. It is one of the mate's duty to check up on the crew before the ship leaves the dock to see that

(Testimony of E. H. Baldwin.)

there is everybody aboard.

Q. Now if you don't have a sufficient number of men to make a full crew, who decides what new men will be taken on? [1149]

A. Well, we notify the Marine Department that we are so many men shy.

Trial Examiner Myers: Who is "we"?

Q. (By Mr. Van Dusen) Who is "we"?

A. Well, the captain or the chief mate. The chief mate notifies the captain whoever is not on board.

Trial Examiner Myers: And what does the captain do?

A. He tells the chief mate to see the shipping master.

Trial Examiner Myers: And you call up and what happens?

A. Then they send down the necessary men we need.

Trial Examiner Myers: And as soon as they get on board you tell the men to go to work, is that it?

A. We sail the ship, yes, sir.

Q. (By Mr. Van Dusen) Then is it true that the captain or the chief mate selects the men for the trip? A. No, sir.

Q. Who does?

A. They are sent there by the shipping master.

Q. They are sent there to the captain or the chief mate, is that correct? A. Yes, sir.

Trial Examiner Myers: Now, that is not the tes-

(Testimony of E. H. Baldwin.)

timony. There is no use twisting it around. The testimony is that the man is sent by the Marine Department to the boat; the captain or the mate calls up the office and says that they need an able-bodied seaman or an ordinary seaman and they [1150] send one down.

Mr. Van Dusen: That is right.

Trial Examiner Myers: That is the testimony.

Mr. Van Dusen: That is right.

Q. (By Mr. Van Dusen) Is the captain obliged to take any man sent to the ship by the ship-pingmaster?

A. We take any man they send down.

Q. They do? A. As far as I know.

Q. Now when a ship arrives back at Port Arthur for loading again, is it the practice to sign here new articles? A. Yes, sir.

Q. Can seamen, on being paid off, quit the ship?

A. Yes, sir.

Q. In the event the captain does not desire to sign new articles with a seaman, what does he do?

A. He doesn't desire to sign them on?

Q. Yes.

A. Well, he tells them that their service is no longer required aboard the ship.

Trial Examiner Myers: He fires them, you mean?

A. His services are no longer required.

Trial Examiner Myers: They are fired?

A. Well, he doesn't put it that way. Just tell

(Testimony of E. H. Baldwin.)

them that their service is no longer required. [1151]

Q (By Mr. Van Dusen) He doesn't sign them on new articles? A. That is it.

Trial Examiner Myers: He tells them in the terms that seamen understand?

A. Oh, yes, seamen understand the terms.

Q. (By Mr. Van Dusen) Has it been your experience that seamen leave the ship and shift from one ship to another? A. Yes, sir.

Q. Now, do you know Captain Hand?

A. Yes, sir.

Q. What are his duties as far as you know?

A. As far as I know his duties are those of the Marine Superintendent of the Southern Division for The Texas Company. He is in charge of the operating of the ships in the Southern Division.

Q. Do you know Captain Roney?

A. Yes, sir.

Q. What are his duties?

A. His duties are as Marine Manager. He is in charge of the Marine Division of The Texas Company.

Q. Is he Mr. Hand's superior?

A. Yes, sir, he is Mr. Hand's superior.

Q. Do you know Captain Riever?

A. Yes, sir.

Q. What are his duties? [1152]

A. As far as I know, he is Vice President or Chairman of the Board or Vice Chairman of the Board or something to that effect.

(Testimony of E. H. Baldwin.)

Q. Is he Mr. Roney's superior?

A. Yes, I would say so.

Q. Now during the time you have been second mate and during the time you have taken over the duties of the chief mate, have you ever inquired of seamen regarding their union activities?

A. No, sir.

Q. Or their union affiliations?

A. No, sir.

Q. Have you been given any instructions at all regarding that by your superiors?

A. No, sir.

Q. Has Captain Roney or Mr. Riever at any time told you not to discriminate because of union activities or affiliations?

A. Yes, sir, he has told that aboard the ship there, not to discriminate aboard toward any unions. [1153]

Trial Examiner Myers: Was that in writing?

A. No, sir, it was not in writing.

Trial Examiner Myers: Who told you?

A. Mr. Roney.

Trial Examiner Myers: When was this?

A. This was, this September it was a year ago.

Q. (By Mr. Van Dusen) Now while you are aboard ship as second mate has it been your experience during all the time that you have been on the sea that members of the crew would come either to you or to the chief mate or to the captain regarding grievances that they might have?

(Testimony of E. H. Baldwin.)

A. Yes, sir.

Q. Have they ever discussed overtime?

A. No, sir.

Q. Have you ever refused to discuss grievances with any seaman?

A. No, sir, I never refuse them.

Q. Do you know whether Captain Peterson ever did? A. I don't think he did.

Q. How about chief mate Rosen?

A. No, sir, he never did either.

Q. Is it the policy of the officers of the "California" to listen to the grievances of the crew?

A. Yes, sir.

Q. And to attempt to iron them out? [1154]

Trial Examiner Myers: You mean to say in all the years you have been a mate nobody complained about——

A. (Interrupting) Oh, yes, they did.

Trial Examiner Myers: (Continuing) —about overtime?

A. They haven't complained to me. That is, when I was chief mate aboard the "California" I had no complaints.

Trial Examiner Myers: No complaints at all about overtime? A. No, sir.

Trial Examiner Myers: What about when you were second mate?

A. When I was second mate they didn't complain to me.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: Did you ever hear of any sailor complaining in all the years you have been a mate? A. Yes, sir, I have heard complaints.

Trial Examiner Myers: Complain about not getting their full overtime? A. Yes, sir.

Q. (By Mr. Van Dusen) You have only been acting as mate in short periods of time, isn't that correct? A. Yes, sir, but different times.

Q. Where would complaints regarding overtime usually go? A. To the master.

Trial Examiner Myers: Directly to the master?

A. No, directly to the chief mate and then to the master. [1155]

Q. (By Mr. Van Dusen) Now on this trip which the "California" took on or about June 30, 1937, do you remember a seaman, an able-bodied seaman, by the name of J. Gordon Rosen?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Do you remember a quartermaster by the name of James B. Blasingame? A. Yes, sir.

Q. Do you remember a second pumpman by the name of Spencer? A. Yes, sir.

Q. Now were you acting as chief mate on or about June 30, 1937, when these two seamen came aboard? A. Yes, sir.

Q. Were you present when they signed articles?

A. No, sir. Not that I recall I wasn't present.

Q. Do you recall having any conversation with

(Testimony of E. H. Baldwin.)

Mr. Rosen? A. No, sir.

Q. At the time he boarded the ship?

A. He reported to me as an able-bodied seaman.

Q. What did you say to him?

A. I told him to go aft and he would find his quarters and to report to the boatswain. I don't remember just what time of the day it happened when he came aboard. [1156]

Q. Did you ask him if he was a member of any union? A. No, sir.

Q. Did he tell you that he was a member of any union? A. No, sir.

Q. Is it your practice to ask seamen whether they are members of any union? A. No, sir.

Q. Now did Mr. Blasingame report to you when he came aboard the ship at that time?

A. Yes, sir.

Q. Do you recall the conversation you had with Mr. Blasingame?

A. Other than my telling him to go—where he would locate the quarters and to report to the boatswain, and if I am not mistaken there was a quartermaster's job open at the present time and I offered it to him. I said there was an A. B.'s job open and a quartermaster's job open and that he could have his choice of either one he wanted.

Q. Which one did he take?

A. He took the quartermaster's job.

Q. Did you ask Mr. Blasingame if he was a member of any union at that time? A. No, sir.

(Testimony of E. H. Baldwin.)

Q. Did he tell you that he was a member of any union at that time? A. No, sir. [1157]

Q. Did those two gentlemen then proceed to their duties on the ship? A. Yes, sir.

Q. Were you present when Mr. Blasingame signed shipping articles? A. No, sir.

Q. Now do you recall when Mr. Rosen left the SS "California"? A. Yes, sir.

Q. About what time was that?

A. It was on September—around September 18; around the middle of September somewhere; somewhere along there, the 15th, 16th or 17th; somewhere in that neighborhood.

Q. Did Mr. Blasingame leave about the same time? A. Yes, sir.

Q. Did Spencer leave about the same time?

A. Yes, sir.

Q. By the way, when Mr. Spencer came on board did he report to you? A. No, sir.

Q. To whom did he report?

A. The chief engineer.

Q. He was second pumpman, was he not?

A. Yes, sir.

Q. Why didn't he report to you?

A. Because he is not under my department whatsoever. [1158]

Q. Did you have any conversation with him when he came aboard? A. No, sir.

Q. Did you ask him whether he was a member of any union? A. No, sir.

(Testimony of E. H. Baldwin.)

Q. Did he tell you he was a member of any union? A. No, sir.

Q. Now those three men left about the same time, you say? A. Yes, sir.

Q. Now during the period of time that Mr. Rosen was on the SS "California" did he at any time inform you that he was a member of a union?

A. No, sir.

Q. Did Mr. Blasingame? A. No, sir.

Q. Did Mr. Spencer? A. No, sir.

Q. Did you ask any of these men whether they were members of a union? A. No, sir.

Trial Examiner Myers: Did they ever come to you with any grievances? A. No, sir.

Trial Examiner Myers: Never did?

A. No, sir. [1159]

Trial Examiner Myers: Rosen never came to you or the captain with any grievances?

A. No, sir, not while I was chief mate. Of course I was demoted back to second mate when the chief mate returned.

Trial Examiner Myers: Didn't you ever hear him talking to the captain or to the chief mate about being delegate of a union? A. No, sir.

Trial Examiner Myers: Didn't you know he was delegate? A. No, sir.

Trial Examiner Myers: Well, everybody else on the boat knew it.

A. Well, I certainly didn't know it.

Trial Examiner Myers: Go ahead.

(Testimony of E. H. Baldwin.)

Q. (By Mr. Van Dusen) Did anybody ever tell you that these gentlemen were members of a union?

A. No, sir.

Trial Examiner Myers: When did you first find out they were members of the union?

A. In the Erie Basin in the shipyard up there.

Trial Examiner Myers: In New York?

A. Yes, sir.

Trial Examiner Myers: What date was that?

A. I don't remember, sir.

Trial Examiner Myers: Was that on Labor Day?

[1160]

A. No, sir. It was in 1937.

Q. (By Mr. Van Dusen) Was that after they had left the ship?

A. That was before they left the ship.

Q. How long before? A. Oh, about a week.

Q. About a week? A. Yes, sir.

Q. Who told you then that they were members of a union?

A. I just heard it. It was just hearsay say so.

Trial Examiner Myers: Do you know how many union men you had on board? A. No, sir.

Trial Examiner Myers: You never have found out to this day?

A. No, sir, never have found out to this day.

Trial Examiner Myers: How did you happen to find out about those two?

A. From discussing some overtime in New York in the way of tank cleaning money. That is the only

(Testimony of E. H. Baldwin.)

time I ever heard it, and that is hearsay say so, that they were union men.

Trial Examiner Myers: With whom were they discussing that?

A. They were discussing that with the chief mate and the captain. [1161]

Trial Examiner Myers: Did you happen to be there? A. No, sir.

Trial Examiner Myers: Who told you?

A. The other members of the crew. I overheard a conversation.

Q. (By Mr. Van Dusen) Now during the course of this trip did you see any members of the crew holding meetings? A. No, sir.

Q. Did you see any literature pertaining to union activities? A. No, sir.

Q. Did you see any material published or posted on bulletin boards on the ship?

A. No, sir, none.

Q. Now how often would you say during the course of a week you would have occasion to see Mr. Rosen? A. Every day.

Q. Every day? A. Yes, sir.

Q. For how long a period of time?

A. For four hours would be the most.

Q. Four hours? A. At sea, of course.

Q. And that was during your watch?

A. No, sir, that was during the morning watch.

Q. Were you on that watch? [1162]

A. No, sir, I wasn't on that watch.

(Testimony of E. H. Baldwin.)

Q. You were off duty then?

A. I was off duty as second mate, but as mate I was around the deck.

Q. Then you would be around the ship while Rosen was working?

A. Yes, providing I was mate.

Q. Yes, when you were mate. A. Yes, sir.

Q. Did you have occasion to give him any orders? A. Yes, sir.

Q. Did you ever have any discussions with him?

A. No, sir.

Q. Now when you were second mate did you have occasion to see Mr. Rosen?

A. No, sir, I saw him only around the deck is all.

Q. Only around the deck? A. Yes, sir.

Q. While you were second mate would he be taking orders from you?

A. No, sir, unless it was some orders that was passed along from the chief mate for me to pass along, but ordinarily, being on the 8 to 12 watch and a man being on the 12 to 4 watch, I would have no reason whatsoever to give him orders for anything. [1163]

Q. While you were second mate did you have any discussions with him that you recall?

A. No, sir.

Q. Now during the course of the voyage did you see much of Mr. Spencer?

A. No, sir, not at sea. I didn't see much of him.

(Testimony of E. H. Baldwin.)

Q. Why not?

A. Because he was working at various places on the ship; in the pump room or in the cargo hold where there is a pump room or he was working in the machine shop in the engine room.

Q. You had nothing to do with that?

A. Nothing whatsoever.

Q. Now during the voyage for the period of time while you were chief mate did you have occasion to come in contact with Mr. Blasingame?

A. Not as chief mate, no, sir.

Q. Not as chief mate? A. No, sir.

Q. And that was for how long a period of time?

A. What is that?

Q. While you were acting as chief mate?

A. About two months.

Q. That was at the beginning of the voyage, was it not?

A. Oh, yes, that was at the beginning of the voyage. [1164]

Q. So you had no occasion to talk to Mr. Blasingame at the beginning of the voyage for approximately two months?

A. As mate whenever we get out to sea I talked to anybody. For instance, the quartermasters, if I have anything to tell them to do, I give them their orders with reference to what they have to do and what they haven't got to do.

Q. Do you recall having any discussions with Mr. Blasingame while you were chief mate?

(Testimony of E. H. Baldwin.)

A. Only one.

Q. Only one? A. Yes, sir.

Q. What was the subject of that conversation?

A. The subject of that was that each mate has a station. We allow those men fifteen minutes in the day time and thirty minutes at night time for their coffee and their smoke and they also have a station to keep clean. The three men have them. One has the wheel-house and one has the chart room and one has the outside brass on the ship to shine, which it takes about an hour and a half or two hours, depending on how fast the man is. Coming into port, coming into Port Arthur or New York, they shine the brass, sweep up the wheel-house and mop it up and clean up the windows and things like that.

Q. Now when you went back to the position of second mate, did you then have much occasion to see and speak to Mr. Blasingame? [1164-A]

A. Yes, sir. He was my quartermaster on my watch.

Q. And what was that watch? A. The 12 to 4.

Q. That is 12 midnight?

A. 12 midnight and 12 noon to 4 p. m. and 4 a. m.

Trial Examiner Myers: Was he on those watches with you?

A. Yes, sir, from 12 to 4. From 12:00 o'clock at noon to 4 in the afternoon, and from 12:00 o'clock midnight to 4 a. m.

Q. (By Mr. Van Dusen) Did you have much

(Testimony of E. H. Baldwin.)

occasion during that period of time to talk to this man? To talk to Mr. Blasingame? A. Yes, sir.

Q. And what did you usually discuss?

A. Well, as I would go in through the wheel-house I would speak. We have coffee in there and as a rule—I came up from the ranks as an ordinary seaman and I have worked my way up and I have had mates to talk to me when I was quartermaster and ask me where I had come from and what ships I had been on; you know, just various questions. That is practiced on most every ship I was ever on. I have done it myself; asked questions and they would ask me questions in turn.

Q. You were his superior then? A. Yes, sir.

Q. During those watches?

A. During the watches, yes, sir. [1165]

Q. During all those conversations did you ask him whether he was a member of a union?

A. No, sir.

Q. Did he tell you? A. No, sir.

Q. Did you discuss union activities or union policies with him? A. No, sir.

Q. Did you at any time make any statements to him to the effect that the company or you did not recognize unions?

A. No, sir, I didn't make such a statement.

Trial Examiner Myers: Did you ever discuss with him any individual in the crew? A. No, sir.

Trial Examiner Myers: Never did?

A. No, sir.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: Well, what were you talking about? A. In what respect?

Trial Examiner Myers: In any respect.

A. As I was standing? As I was on my watch?

Trial Examiner Myers: Yes.

A. Well, as I said a minute ago I asked him where he came from; what ships he was on.

Trial Examiner Myers: Well, that you found out maybe the first time or the second time you talked to him, but you [1166] were two months with him.

A. We talked about the weather, the speed of the ship, when we were going to get where we were going, when we were going to get ashore.

Trial Examiner Myers: Nothing about the political situation of the United States?

A. No, sir, we never discussed that.

Trial Examiner Myers: Go ahead.

Did you ever hear the expression "rank and file"? A. Yes, I have heard the expression.

Trial Examiner Myers: What does that mean to you? A. I don't know.

Trial Examiner Myers: What?

A. I don't know, sir.

Trial Examiner Myers: How many times have you heard it?

A. I have heard it among the crew. I have heard the crew talk about it.

Trial Examiner Myers: You don't know what "rank and file" means?

A. No. Truthfully speaking, I don't know.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: Well, "rank and file" in my way of thinking is just the common ordinary people.

A. I don't know, sir.

Trial Examiner Myers: What?

A. I don't know, sir. [1167]

Trial Examiner Myers: What do you call the people in general?

A. In general? I wouldn't call them that kind of thing.

Trial Examiner Myers: What would you call them?

A. I would call them the public.

Trial Examiner Myers: The public? Surely; the rank and file is the public.

A. No, I wouldn't say "rank and file".

Trial Examiner Myers: The people on the street are the rank and file.

A. Well, I don't know what it is.

Mr. Van Dusen: Are you finished, Mr. Examiner?

Trial Examiner Myers: Yes.

Q. (By Mr. Van Dusen) Mr. Baldwin, do you recall any conversation with Mr. Rosen——

A. (Interrupting) No, sir.

Q. Pardon me just a minute.

(Continuing) —when he came aboard the ship and asked you what his duties were in which you made this statement, "Just a minute. There is one thing I want to tell you we don't allow on this ship and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business"? A. No, sir.

(Testimony of E. H. Baldwin.)

Q. Did you make any such statement? [1168]

A. No, sir.

Trial Examiner Myers: Didn't you warn him about not getting drunk? A. No, sir.

Trial Examiner Myers: It is common practice for seamen to get drunk, isn't it?

A. Surely. I have been drunk. I have seen a lot of others drunk.

Trial Examiner Myers: And come on board drunk?

A. And come on board drunk. As a seaman I did too.

Trial Examiner Myers: They even have that on the articles. The first page of the articles says, "Any member of the crew reporting in an intoxicated condition on sailing day shall be discharged and a substitute shipped in his stead."

A. Oh, yes.

Trial Examiner Myers: That is a pretty common practice?

A. Yes, sir, that is a pretty common practice.

Trial Examiner Myers: All right. Go ahead. You say you didn't bother warning him on that?

A. No, sir, they all know that.

Q. (By Mr. Van Dusen) Can you distinguished between a man who is drunk and a man who has been drinking? A. Yes, sir.

Q. Is it the policy on the "California" to keep on board [1169] ship men who are habitually drunk?

(Testimony of E. H. Baldwin.)

A. No, we don't keep them if they are drunk in every port we go to. We can't afford that.

Trial Examiner Myers: When you fire a man for being drunk what is the procedure?

A. What is the procedure?

Trial Examiner Myers: Yes.

A. Do you want to know at the present time?

Trial Examiner Myers: Yes.

A. We get a statement from the man. We have another witness there. We get another member of the crew or the mate and we get a statement on that man admitting he is drunk and the statement is given to the master and it is forwarded to New York with his own statement.

Trial Examiner Myers: You mean where he is drunk? A. Yes, sir.

Trial Examiner Myers: Suppose he doesn't give you a statement?

A. Well, he has to give you a statement.

Trial Examiner Myers: I beg your pardon?

A. I haven't had no instance to see a man who would refuse to give a statement.

Trial Examiner Myers: Or wouldn't admit he was drunk?

A. Yes, we have never had that happen yet.

Trial Examiner Myers: And that is forwarded to the New [1170] York office?

A. Yes, sir, that is forwarded to the New York office.

Trial Examiner Myers: And that fellow is for-

(Testimony of E. H. Baldwin.)

ever blackballed?

A. I couldn't say about that. I don't know that, sir.

Trial Examiner Myers: That is the purpose of sending it to the New York office, isn't it?

A. As far as I know it is to have a record of the character of the man.

Trial Examiner Myers: Don't you ever notify the home port?

A. If we had an instance to do that, well, it would be reported. The letter would go to Mr. Hand.

Trial Examiner Myers: To Mr. Hand?

A. Yes, sir.

Trial Examiner Myers: I mean if the man signed on at Port Arthur would you notify Mr. Hand that the man was drunk and that you fired him for drunkenness?

A. If we returned him to Port Arthur we would.

Q. (By Mr. Van Dusen) When you say "fired" you mean?

A. His services no longer required aboard the ship.

Q. That is, you don't sign him up on new articles?

A. No, we just don't sign him up on new articles. [1171]

Trial Examiner Myers: How long has that practice been in effect to get a confession from the man? Would you say the last eighteen months?

A. No, sir, not as I know of.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: In the last year?

A. Oh, it has been probably three or four months ago is the first time that I knew it was in effect.

Trial Examiner Myers: Are those written instructions?

A. To the best of my knowledge the captain has a letter in regards to that.

(Discussion off the record.)

Trial Examiner Myers: What was the practice before you got those written instructions about getting a written confession?

A. What was the practice?

Trial Examiner Myers: Yes.

A. Well, as I say if the man was disqualified and all, he was told he was no longer required.

Trial Examiner Myers: Would you notify anybody to that effect in the office?

A. No, sir. It went in on the crew list that the man was off the ship and the reason that he left the ship. It goes in on the crew list; the changes of the crew.

Trial Examiner Myers: By the "crew list" you mean these shipping articles? [1172]

A. No, sir. There is a crew list, a form made up by The Texas Company, that is sent in to the New York office every time the ship leaves port.

Trial Examiner Myers: Who has charge of that? Captain Hand? A. You mean in receiving it?

Trial Examiner Myers: Sending it to the New

(Testimony of E. H. Baldwin.)

York office.

A. I make it out and the captain or the mate forwards it to the New York office.

Trial Examiner Myers: Do you keep a copy aboard ship?

A. No, sir, we don't keep a copy aboard the ship. We have the articles and the information in the crew list is on the articles with their name.

Trial Examiner Myers: Why they are fired?

A. Yes, sir. It is not on the articles, but it is on the list that goes to New York. There is no space for that on the articles.

Trial Examiner Myers: It says "Conduct and qualifications." Couldn't you put it there, referring to Respondent's Exhibit No. 1? There is a column there marked "Conduct and qualifications." Couldn't you put it there?

A. Oh, yes, it could be put there if I had orders to do it.

Trial Examiner Myers: All right.

A. My instructions are to put it on the crew list.

[1173]

Mr. Van Dusen: Are you finished, Mr. Examiner?

Trial Examiner Myers: Yes.

Q. Now, Mr. Baldwin, when Mr. Blasingame came aboard the ship, do you recall making this statement to him; that you would not "stand for any drunkenness on this ship, missing watches, or any agitating the crew on union matters"?

(Testimony of E. H. Baldwin.)

A. No, sir, I never said it.

Q. Now, Mr. Baldwin, do you recall an instance when Mr. Rosen was on a special job of replacing the halyard for the radio antenna?

A. Yes, sir, I can recall it, but I can recall it not as a special job. It is a routine job among the able-bodied seamen.

Q. Is that a job that any able-bodied seamen should be able to perform?

A. Yes, sir, he should be able to perform that.

Q. He should be able to perform that to get his license?

A. Yes, sir.

Q. Do you recall during that trip having a special splicing job during which you said to Mr. Rosen, "Rosen, I would like you to come out this afternoon and finish this splicing. I wouldn't trust any of the other fellows back there to do it. If you do it I will give you time off in Port Arthur"? Do you recall that?

A. I asked him to come back and finish the job that he had [1174] started and I said I would give him time off.

Q. Is that a job which any A. B. should have been able to perform?

A. Yes, sir, that is a job that any A. B. should have been able to perform.

Q. Why was it given to him?

A. Because it was at sea on the 8:00 to 12:00 watch and it was given to him.

Q. Was there any other A. B. on duty?

(Testimony of E. H. Baldwin.)

A. Yes, sir, there was another man on duty.

Q. Why wasn't it given to him?

A. There was another man assisting him, but I can't recall who it was; whether it was an A. B. or an ordinary seaman.

Q. Do you think he could have performed that job?

A. If the A. B. had been there he probably could have.

Q. Now do you recall when Mr. Rosen left the ship?

A. Yes, sir.

Trial Examiner Myers: Which Mr. Rosen?

Q. (By Mr. Van Dusen) J. Gordon Rosen.

A. Yes, sir.

Q. Do you recall Mr. Rosen saying to you when he went up to you for his discharge, "What is the reason for me getting fired?"

A. No, sir.

Q. Do you recall saying to Mr. Rosen, "The reason? Well, [1175] you know we don't want any agitating back there"?

A. No, sir, I didn't say that.

Q. Did you ever make any such statement?

A. No, sir.

Trial Examiner Myers: Did he ask you why he was fired?

A. No, sir.

Trial Examiner Myers: Did he ask you why he was discharged?

A. No, sir.

Trial Examiner Myers: He just went in and got his money, was discharged and walked away?

A. As far as I know, yes, sir.

(Testimony of E. H. Baldwin.)

Q. (By Mr. Van Dusen) Was Mr. Rosen discharged as far as you know?

A. Why was he discharged?

Q. I say was he, as far as you know.

A. As far as I know, no, sir, he was not.

Q. Was Mr. Blasingame discharged, as far as you know?

A. As far as I know, no, sir.

Q. Was Mr. Spencer?

A. No, sir. I don't know about him.

Trial Examiner Myers: Is it your contention, Mr. Van Dusen, that these men have not been fired?

Mr. Van Dusen: Yes. Our contention is that they left the "California" and quit of their own accord. [1176]

Trial Examiner Myers: Is that the last boat these gentlemen were on?

Mr. Van Dusen: No. Mr. Rosen was on three boats. He has got three separate claims, you see, in the complaint. This is the first one.

Trial Examiner Myers: You claim he was fired the last time?

Mr. Van Dusen: The last two, yes, sir.

Trial Examiner Myers: The last two he was fired? [1177]

Mr. Van Dusen: We claim that his articles were terminated and were not renewed the last two times.

Q. (By Mr. Van Dusen) Do you recall the circumstances under which Mr. Rosen was paid off and got his discharge; that is, his discharge certificate?

(Testimony of E. H. Baldwin.)

Do you recall that? A. How is that?

Q. Do you recall the circumstances under which Mr. Rosen was paid off and got his certificate of discharge?

A. I didn't know anything about it until the chief mate notified me that he had left on his own accord, so that I could put it in my crew list that I was to send to New York.

Q. Did you put that in your crew list?

A. I did; that he left on his own accord, as the chief mate told me.

Q. Did you pay him off or did the chief mate pay him off? A. The master paid him off.

Q. The master paid him off? A. Yes, sir.

Q. Did you give him his certificate of discharge or did the master? A. The master.

Trial Examiner Myers: What did you have to do with it if the master did everything?

A. The master gives the discharges. That is his job.

Trial Examiner Myers: What did you have to do with it? [1178] A. With what?

Trial Examiner Myers: With Rosen leaving the ship? A. I didn't have nothing to do with it.

Trial Examiner Myers: Well before he asked you whether Rosen said that to you, reading certain statements, and you said "no".

A. No, I didn't know anything about Rosen leaving the ship. The chief mate told me why he left the ship; on his own accord.

(Testimony of E. H. Baldwin.)

Trial Examiner Myers: And how did that happen to come up? A. What is that?

Trial Examiner Myers: The discussion between you and the chief mate?

A. In order to make out my crew list. When a man leaves I ask the mate why he left and I also ask the chief engineer and the steward, because I have to put it on my list.

Mr. Van Dusen: Mr. Examiner, I will show you a crew list so that you can follow it.

Trial Examiner Myers: Go ahead. I understand.

Mr. Van Dusen: Do you want to see the crew list?

Trial Examiner Myers: Go ahead.

Mr. Van Dusen: Oh, you don't want to see it.

Trial Examiner Myers: Do you know why William John McKenna was paid off on August 30, 1937? [1179] A. McKenna?

Trial Examiner Myers: Yes.

A. I don't recall the name.

Trial Examiner Myers: Do you know why William H. Butler was paid off on the same day?

A. No, sir, I don't recall.

Trial Examiner Myers: Or Charles W. Sterling paid off on September 10?

A. No, sir, I don't recall.

Trial Examiner Myers: Or Willard T. Maloz was paid off on September 10?

A. No, sir, I don't remember.

Trial Examiner Myers: Hugh James Duffey, do

(Testimony of E. H. Baldwin.)

you know why he was paid off on September 7, 1937? Do you remember why he was paid off?

A. No, sir, I don't remember why he was paid off.

Q. (By Mr. Van Dusen) Mr. Baldwin, will the crew list refresh your recollection on that, on why those men left? A. Yes, sir.

Trial Examiner Myers: I want to know why he knows about Rosen's leaving so well and doesn't know about these other men.

A. Well, there are different reasons. Some men are on there for a trip during the summer and some of them make a relief trip. [1180]

Trial Examiner Myers: How do you know Rosen's so well? Why do you know all the circumstances——

Mr. Van Dusen: He said the mate told him.

Trial Examiner Myers: (Continuing) Regarding Rosen leaving the ship?

A. I remember the instance.

Trial Examiner Myers: And you don't remember of these others?

A. I don't remember of these others, but I remember this particular instance because the chief mate told me.

Trial Examiner Myers: Well, the chief mate must have told you about those men I read off, didn't he?

A. Yes, sir, he told me about them.

Trial Examiner Myers: And you don't remember?

(Testimony of E. H. Baldwin.)

A. I would have to look at the crew list to tell.

Q. (By Mr. Van Dusen) Have you given particular thought about Mr. Rosen and Mr. Blasingame in view of this particular case; this proceeding?

A. Have I done what?

Q. Have you given particular thought to Mr. Rosen's and Mr. Blasingame's case in view of this particular case here?

A. Yes, I gave thought to it.

Q. In other words, you tried to recollect what happened?

A. I did remember the best I could. [1181]

Q. Have you discussed it with Mr. Rosen, your chief mate?

A. Yes, I discussed it with him.

Q. Do you recall any discussion with Mr. Blasingame while you were on watch with him?

A. Yes, sir, as I said a while ago.

Q. Just a minute. Do you recall any discussion with Mr. Blasingame while you were on watch with him in which you asked him how many union men were aboard?

A. No, sir, I never asked those questions.

Q. Did you discuss with him a man that had been on there that belonged to the union that you had gotten rid of?

A. No, sir.

Q. Did you mention a man by the name of Charley Morton as one whom you got rid of for agitating unions?

A. No, sir.

Q. Do you remember Charley Morton?

A. No, sir, I don't remember him.

(Testimony of E. H. Baldwin.)

Q. Did you say to Mr. Blasingame that you had to get rid of this man Morton because he was agitating union all the time?

A. No, sir, I never said such a thing.

Q. Did you keep telling Mr. Blasingame that you had no use for any unions whatsoever?

A. No, I never said that.

Q. Did you tell Mr. Blasingame that you had at one time be- [1182] longed to a union on the west coast and gotten gypped out of about \$50.00?

A. No, sir. I never joined no union.

Q. Have you ever been a member of a union?

A. No, sir, I have never been a member of no union. [1183]

Q. Did Mr. Blasingame ever discuss with you Arthur Spencer, Slim Clark or a man named Meyers or a man named Buster Scott? A. No, sir.

Q. Did he ever say anything to you about their being members of a union? A. No, sir.

Q. Did you ever inquire about them?

A. No, sir.

Q. How about a man named Smith?

A. No, sir.

Q. Did you ask Mr. Blasingame whether any of them were members of a union? A. No, sir.

Q. Do you recall a seaman who joined the crew at Port Arthur, an ordinary seaman, who had been employed aboard the Pennsylvania Shipping Company's ship "Paco"? A. No, sir.

Q. Did you say to Mr. Blasingame that that

(Testimony of E. H. Baldwin.)

gentleman was a member of the rank and file?

A. No, sir.

Q. Did you ask Mr. Blasingame whether he was a member of the rank and file? A. No, sir.

Q. Did you say to Mr. Blasigame that if he were a member of the rank and file he wouldn't "Be on this ship very long"?

A. No, sir, I didn't say it. [1184]

Q. Do you remember a fireman by the name of Dan Whittenberg coming aboard the ship *ship* at Newberg? A. Yes, sir.

Q. Do you recall saying to Mr. Blasingame as Mr. Whittenberg came aboard the ship "There is a man that won't ride this ship very long" because he had an N. M. U. button on the lapel of his coat?

A. No, sir.

Q. Now, Mr. Baldwin, didn't this man Whittenberg come aboard the ship on the Sunday prior to Labor Day in 1937?

A. I can't remember what day it was, but it was at Newberg where he came aboard the ship.

Q. It was shortly before the time Mr. Rosen and Mr. Blasingame left the ship?

A. Well, I can't recall just when the man did come aboard the ship, but I know he did come aboard at Newberg.

Q. Now, did he remain on the ship after Rosen and Blasingame left? A. Yes, sir.

Q. Did you or the chief mate or the captain

(Testimony of E. H. Baldwin.)

discharge him at Port Arthur at the time Mr. Blasingame and Mr. Rosen left the ship?

A. No, sir, he wasn't discharged off the ship.

Q. He remained on? A. Yes, sir. [1185]

Q. And signed new articles? A. Yes, sir.

Q. Now, how long did he remain on the ship?

A. I would say roughly speaking a couple of months.

Q. Do you know why he left the ship?

A. Yes, sir.

Q. Why?

A. Because he received a message from Mr. Roney, the marine manager, that his mother was not expected to live; that she was near death.

Q. Where did he leave the ship?

A. He left it at Stapleton.

Q. Where did he leave the ship? A. What?

Q. I say where did he leave the ship?

A. At Stapleton, New York. We anchored the ship just to let him off the ship that night.

Q. Do you recall talking to Mr. Blasingame as the "California" was going through Sabine Pass and commenting on a boat called the "Larry Doheny"? A. No, sir.

Q. Do you recall saying to Mr. Blasingame regarding that ship, "There is one of your rank and file ships. Don't you think this ship looks better?"

A. No, sir. [1186]

Q. Were you present at the time Mr. Blasingame left the ship? A. I was aboard the ship.

(Testimony of E. H. Baldwin.)

Q. You were aboard the ship? A. Yes, sir.

Q. Did he go to you to be paid off?

A. No, sir.

Q. Did he go to you to get his certificate of discharge? A. No, sir.

Q. Do you know who gave him a certificate of discharge?

A. The master. To the best of my knowledge the master did.

Q. Do you know who paid him off?

A. The master.

Trial Examiner Myers: You only surmise that.

A. The master has a habit that he always gives his own discharges.

Trial Examiner Myers: Captain Peterson?

A. Yes, sir, Captain Peterson. He never lets any other one give them a discharge except himself. If he has a book, he enters it in their book. If they have an identification certificate he gives him a discharge, because he has a stub that he fills out that stays aboard the ship.

Q. (By Mr. Van Dusen) Did you see Mr. Blasingame before he left the ship after arriving at Port Arthur?

A. I saw him around the deck is the only thing.

[1187]

Q. Did he talk to you? A. No, sir.

Q. Did you talk to him? A. No, sir.

Q. Did you at any time tell him he was fired?

A. No, sir.

(Testimony of E. H. Baldwin.)

Q. Do you know whether he fired?

A. Other than what Mr. Rosen, the mate, told me.

Q. And what did Mr. Rosen the mate tell you?

A. That he left on his own accord.

Q. Was it the practice of Captain Peterson to pay off these men one at a time or in a group?

A. In a group. They formed in a line.

Q. Were you in the Captain's office when they were paid off and given their certificates of discharge?

A. I couldn't recall. I have been there a lot of times when he gave different men discharges, but I can't recall whether I was there at the time when he gave them theirs or not.

Q. How long was the boat in Port Arthur at that time before it left on its next trip?

A. Well, as a rule we only get one night in. We get one day and a night. Now and then we may get two nights, but it is not very often that we get two nights.

Q. Do you recall whether Slim Clark, who was referred to by [1188] Mr. Blasingame in his testimony, remained on the ship?

A. I can't recall whether he remained on the ship or not without seeing the crew list.

Q. Is this the crew list of the SS "California" showing who left the ship at the time it arrived in Port Arthur on or about September 18?

A. Yes, sir.

(Testimony of E. H. Baldwin.)

Q. Will you look at that and see if it refreshes your recollection as to whether Mr. Clark remained the ship? A. Yes, sir, Clark was an oiler.

Q. And he remained on the ship?

A. Yes, sir.

Q. Will you also look at this and let me know whether a man named Smith remained on the ship?

A. Yes, sir, Smith is here.

Q. How many Smiths are there on that sheet?

A. Two.

Q. Did they both remain on?

A. Yes, sir.

Q. Does this show whether Mr. Whittenberg remained on the ship?

A. Yes, sir. There he is as fireman.

Q. As fireman? A. Yes, sir.

Q. Does this show whether any others in addition to Rosen, [1189] Blasingame and Spencer left the ship of their own accord?

A. Yes, it shows that a fellow by the name of Christensen, Albom, Eden and Leeds left the ship.

Q. Now, was there any reason that you know why either Mr. Blasingame, Mr. Rosen or Mr. Spencer should have been fired from that ship?

A. No, sir.

Q. Now, do you have the authority to discuss with the seamen on board ship and dispose of their grievances; any grievances?

A. Not as second mate, no, sir.

Q. Not as second mate?

(Testimony of E. H. Baldwin.)

A. No, sir, not as second mate.

Q. Who had that authority?

A. The chief mate and the captain.

Mr. Van Dusen: Mr. Examiner, I am not entirely sure that I have covered all parts of this testimony referred to by Mr. Blasingame and Mr. Rosen. I thought this morning that Mr. Martin would take all of this day and part of tomorrow. I would like to have the opportunity to just go through that tonight and I may have one or two more questions to ask.

Trial Examiner Myers: Well, it is 5:30 now. I think we ought to recess. We have had a very full day.

We will recess until 9:00 o'clock in the morning.

(Whereupon, at 5:30 o'clock p. m., September 19, 1938, the hearing was adjourned to 9:00 o'clock a. m., September 20, 1938.) [1190]



